

reexamine ISS certificates to determine whether modifications are required.

PC-7. (A)

Docket No. CI85-673-006, *et al.*, LaSER Marketing Company, *et al.*

Docket No. CI87-547-004, Enron Gas Marketing, Inc.

Docket No. CI87-786-003, Val Gas, L.P.

Docket No. CI87-825-003, V.H.C. Gas Systems, L.P.

Docket No. CI89-7-002, Pacific Atlantic Marketing, Inc. Request to extend blanket sales certificates. Whether to authorize the sale or resale of ISS gas purchased from pipelines.

PC-7. (B)

Docket No. CI86-419-004, ANR Supply Company

Docket Nos. CI88-346-004 and 003, Anthem Energy Company

Docket Nos. CI86-377-004 and CI86-378-004, Arkla Energy Marketing Company

Docket No. CI89-302-001, Chevron U.S.A. Inc.

Docket No. CI89-194-001, Coastal Gas Marketing Company

Docket No. CI88-274-002, Coastal States Gas Transmission Company

Docket No. CI89-332-001, Columbia Gas Development Corporation

Docket No. CI87-547-006, Enron Gas Marketing, Inc.

Docket No. CI89-501-001, Enserch Gas Company

Docket No. CI89-361-001, Equitable Resources Marketing Company

Docket No. CI85-673-007, LaSER Marketing Company

Docket No. CI87-307-003, MidCon Marketing Corporation

Docket No. CI87-223-004, Oxy USA, Inc.

Docket No. CI89-7-003, Pacific Atlantic Marketing, Inc.

Docket No. CI88-74-003, Panhandle Trading Company

Docket No. CI86-7-006, Seagull Marketing Services, Inc.

Docket No. CI86-503-004, Sonat Marketing Company

Docket No. CI86-168-006, Tenngasco Corporation and Tenngasco Exchange Corporation

Docket No. CI86-27-007, Transco Energy Marketing Company

Docket No. CI87-476-003, TXG Gas Marketing Company

Docket No. CI87-786-004, Val Gas L.P.

Docket No. CI87-825-005, V.H.C. Gas Systems, L.P.

Docket No. CI86-648-002, Western Gas Marketing USA Ltd.

Docket No. CI89-479-001, Western Gas Processors, Ltd. Request to extend affiliated marketers' certificates.

PC-8.

Docket Nos. CP88-171-000 and 001, Tennessee Gas Pipeline Company

Docket Nos. CP88-94-000, 001, CP88-194-000 and 001, National Fuel Gas Supply Corporation

Docket Nos. CP88-92-000 and 001, Transcontinental Gas Pipe Line Corporation

Docket Nos. CP88-195-000, 001, 002, and PennEast Gas Services, CNG

Transmission Corporation and Texas Eastern Transmission Corporation

Docket Nos. CP87-131-002 and CP87-132-002, Tennessee Gas Pipeline Company. Application for authorization to construct pipeline facilities.

PC-9.

Omitted

Lois D. Cashell,

Secretary.

[FR Doc. 90-5767 Filed 3-8-90; 3:59 pm]

BILLING CODE 6717-01-M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Tuesday, March 6, 1990, at 2:50 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the resolution of two thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Jonathan Fiechter, acting in the place and stead of Salvatore R. Martoche (Acting Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: March 7, 1990.

Resolution Trust Corporation

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-5699 Filed 3-8-90; 11:14 am]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 55, No. 48

Monday, March 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4329 appearing on page 6831 in the issue of Tuesday, February 27, 1990, make the following correction:

On page 6831, in the second column, before *Title*, add "Agreement No.: 212-010286-024".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In notice document 90-4330 appearing on page 6831 in the issue of Tuesday, February 27, 1990, make the following correction:

On page 6831, in the third column, before *Title*, add "Agreement No.: 224-200326".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89E-0473]

Determination of Regulatory Review Period for Purposes of Patent Extension; LOSEC®

Correction

In notice document 90-3065 beginning on page 4691 in the issue of Friday,

February 9, 1990, make the following corrections:

1. On page 4691, in the second column, in the fourth line from the bottom of the page, "3,255,431" should read "4,255,431".

2. On the same page, in the third column, in the ninth line from the bottom "nay" should read "any".

3. On the same page, in the same column, in the eighth line from the bottom, "any" should read "may".

4. On page 4692, in the first column, in the sixth line, "89th" should read "98th".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Programs; Proposed Total Allocations and Allocation Formulas for Program Year 1990; Regular Program and Calendar Year 1990 Summer Youth Employment and Training Program

Correction

In notice document 90-4098 beginning on page 6548 in the issue of Friday, February 23, 1990, make the following corrections:

1. On page 6549, in the table, in the first column, in the fifth complete entry, the first line should read "North Pacific Rim".

2. On page 6553, in the table, in the first column, in the fourth complete entry, the zip code should read "55720".

3. On page 6554, in the table, in the sixth column, the sixth entry should read "43518".

4. On the same page, in the 4th column, the 12th entry should read "24841".

5. On page 6555, in the table, in the third column, the second entry should read "556,822".

6. On the same page, in the first column, in the fifth complete entry, the

grant number should read "99-7-2200-55-129-02".

7. On page 6560, in the table, in the first column, in the fifth complete entry, the zip code should read "53204-3512".

BILLING CODE 1505-01-D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1207

Standards of Conduct

Correction

In rule document 89-1880 beginning on page 4002 in the issue of Friday, January 27, 1989, make the following correction:

§ 1207.80 [Corrected]

On page 4004, in the first column, remove the section heading and text designated § 1207.80.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

At the end of notice document 90-5030 beginning on page 8214 in the issue of Wednesday, March 7, 1990, make the following correction:

On page 8247, in the first column, in the document file line, "Filed 3-6-90" should have read "Filed 3-7-90".

BILLING CODE 1505-01-D

Federal Register

Monday
March 12, 1990

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 791 and 882

Section 8 Certificate Program; Project-
Based Assistance; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 791 and 882

[Docket No. R-90-1394; FR-2502-I-02]

RIN 2502-AE56

Section 8 Certificate Program; Project-Based Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises HUD regulations to permit a Public Housing Agency (PHA) to attach Section 8 Certificate Program assistance to newly constructed units. The rule implements a recent statutory amendment, which provides that the Department shall permit a PHA to attach, to newly constructed structures as well as to rehabilitated units, up to 15 percent of the Section 8 Certificate Program assistance provided by the PHA. The owner must agree to construct the units with other than assistance under the United States Housing Act of 1937. Because of the greater potential environmental impact and fair housing considerations inherent in new construction activity, as compared to the rehabilitation of existing structures, this interim rule provides for more HUD involvement in the review of newly constructed projects than the January 1989 interim rule provided for rehabilitated projects. This interim rule also provides more specificity concerning the information that a PHA must require from the owner when new construction is involved.

DATES: *Effective date:* This rule is effective on April 12, 1990, except for §§ 882.720(b)(2), 882.723(b), 882.725, and 882.733(b), which will not be effective until approval of the information collection requirements in those sections and issuance of an approval number by the Office of Management and Budget (OMB). HUD will publish a separate notice announcing the effective date of those sections and the OMB approval number. *Comment due date:* May 11, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays

between 7:30 a.m. and 5:30 p.m. at the above address.

As a convenience to commenters, the Rules Docket clerk will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via the FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084). (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-3938. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in §§ 882.720(b)(2), 882.723(b), 882.725, and 882.733(b) of this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The Department has requested expedited review of these information collection requirements by April 11, 1990. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements.

The other information collection requirements contained in this rule have previously been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0388.

Public reporting burden for each collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Information*.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

This interim rule implements section 8(d)(2)(B) of the United States Housing Act of 1937 (the 1937 Act), as added by section 1005(b)(1) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the 1988 McKinney Act). Section 8(d)(2)(B) of the 1937 Act directs HUD to permit a PHA to attach assistance to any newly constructed structure if the owner or prospective owner agrees to construct the structure other than with assistance under the 1937 Act and otherwise complies with the requirements of Section 8 of the 1937 Act, and if the aggregate assistance provided by the PHA to be attached to newly constructed or rehabilitated units does not exceed 15 percent of the Certificate Program assistance provided by the PHA.

On January 4, 1989, the Department published an interim rule (54 FR 230) (January 1989 interim rule), implementing the rehabilitation component of project-based Certificate Program assistance in accordance with section 8(d)(2)(A) of the 1937 Act. The January 1989 interim rule added a new subpart G to part 882. This interim rule revises subpart G to add provisions to permit project-based assistance in connection with newly constructed units.

Because of the greater potential environmental impact and fair housing considerations inherent in new construction activity, as compared to the rehabilitation of existing structures, this interim rule provides for more HUD involvement in the review of newly constructed projects than the January 1989 interim rule provided for rehabilitated projects. This interim rule also provides more specificity concerning the information that a PHA must require from the owner when new construction is involved.

It should be noted that this interim rule is a complete revision to part 882, subpart G. Accordingly, it totally replaces the subpart G that was added by the January 1989 interim rule and it applies to, and comments are solicited concerning, all aspects of project-based

Certificate Program assistance, rehabilitation, as well as new construction. The Department believes that several requirements formulated as part of the development of this interim rule and not included in the January 1989 interim rule are appropriate for application to rehabilitation, as well as to newly constructed projects, and has made several changes in provisions concerning rehabilitation. The following section-by-section discussion of the rule text includes a discussion of those revisions to requirements applicable to rehabilitation. It also identifies provisions, applicable in this interim rule only to new construction, that the Department is considering extending to rehabilitation in the final rule.

The January 1989 interim rule noted that the comment due date for that rule was being left open and would be set in this interim rule (see 54 FR 231). As previously noted, this interim rule includes the rehabilitation component, as well as the new construction component, of project-based assistance. The Department is hopeful that this extended comment period may permit comment based on actual experience in administering or otherwise participating in the rehabilitation component of project-based Certificate Program assistance.

SECTION-BY-SECTION ANALYSIS

General

Section 882.701 Purpose and Applicability

Paragraph (b) of this section contains a technical revision which adds a brief description, omitted in the January 1989 interim rule, of "project based assistance." In addition, a new paragraph (e) has been added to make it clearer that this project-based assistance is funded out of a PHA's ACC funding authority for its entire Certificate Program and that HUD does not provide separate funding for project-based assistance. This paragraph has been added to minimize the likelihood that a PHA might assume that it will receive additional funding, and is not a change in policy.

Section 882.702 Additional Definitions

The definition of "15-Percent Limit" in the January 1989 interim rule based the 15-Percent Limit on "the total number of units reserved by HUD for a PHA's Section 8 Certificate Program." The reason for using units "reserved" rather than "under ACC" was to permit a PHA to avoid the need to seek HUD approval for a higher limit when units reserved but not yet under ACC were placed under ACC by the PHA. However, the

provision as drafted in the January 1989 interim rule was deficient because it would have permitted a PHA to enter into Agreements to project-based assistance that could exceed 15 percent of the number of units under ACC.

This rule revises the definition of "15-Percent Limit" so that it is based on "the total number of units under ACC for a PHA's Section 8 Certificate Program." Related revisions have been made in § 882.703 (a)(1) and (b)(1). Section 882.703(a)(1) has been revised to make it clear that the PHA may not enter into Agreements for project-based units in excess of the 15-Percent Limit, but also permits the HUD Field Office to determine the maximum number of units that may be project-based on the assumption that units that have been reserved but are not yet under ACC will be under ACC before Agreements for the project-based units are executed. If a PHA does not place these reserved units under ACC, it would not be able to project-base to the maximum authorized by the HUD Field office. Under § 882.703(b)(1) as revised by this rule, the PHA identifies the "number of units currently under ACC plus the number of units reserved but not yet under ACC" rather than the "number of units currently reserved." The definition of "Funding Source" also has been slightly revised for clarity.

Section 882.703 Information To Be Submitted to HUD by the PHA Concerning Its Plan To Attach Assistance to Units

See the discussion of "15-Percent Limit" under § 882.702 for a discussion of changes in this section concerning units reserved but not yet under ACC.

Paragraph (a)(2) has been revised to make it clear that the PHA must indicate for each funding source the number of units by unit size to which assistance will be attached.

The information submitted to HUD by the PHA under this section is intended to enable HUD to ascertain that the PHA's anticipated use of project-based certificate Program assistance will remain within the 15-percent limit. Since that limit applies to project-basing as a whole, this section does not distinguish between new construction units and rehabilitation units.

Paragraphs (a)(3) and (b)(4) of § 882.705 of the January interim rule had provided that the rehabilitation period and HAP Contract term must be within the ACC term. This rule removes the reference to the "rehabilitation period" because the ACC limitation applies only to the HAP Contract termination date. A lengthy rehabilitation period would delay HAP Contract execution but could

not be a basis for extending the HAP contract term beyond the ACC term for the funding source.

Section 882.707 New Construction: Housing Quality Standards and Construction Standards

The housing quality standards in § 882.109 apply to new construction units.

Section 882.708 New Construction: Site and Neighborhood Standards

This section contains the site and neighborhood standards for new construction projects. Each of HUD's assisted housing construction programs has site and neighborhood standards by which HUD assesses the physical adequacy of the proposed site, its suitability from the standpoint of facilitating and furthering compliance with applicable civil rights laws and authorities, and its accessibility to various services. The policies in paragraph (c) relating to the acceptability of sites in areas of minority concentration and in racially mixed areas are derived from the policies that applied to the Section 8 New Construction Program (see 24 CFR 880.206(c)), but provide more detail on how the standards are to be applied.

Section 882.711 Prohibition Against New Construction or Rehabilitation With U.S. Housing Act of 1937 Assistance and Use of Flexible Subsidy: Pledge of Agreement or HAP Contract

The January 1989 interim rule (§ 882.725(a)), in accordance with section 8(d)(2) of the 1937 Act, prohibited the use of any other assistance provided under the 1937 Act to rehabilitate a unit to which assistance is to be attached under this subpart G. Section 882.725(a) also prohibited attaching assistance to a unit that had been, within five years of execution of a HAP agreement, rehabilitated with other assistance provided under the 1937 Act. The rule provided one exception to this latter prohibition, namely, project-based assistance could be attached to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation under section 21 of the 1937 Act. This rule continues that policy, but the rule has been revised to make it clearer that public housing modernization funds may not be used to finance the rehabilitation needed to meet the requirements of § 882.710, Rehabilitation: minimum expenditure requirement, to qualify for project-based assistance under this subpart G.

The provisions relating to the pledge of the agreement or HAP contract (§ 882.711(b)) have been simplified. In addition, the prohibition against being a party to the financing documents (§ 882.725(b)(2) of the January 1989 interim rule) has been eliminated. This change will permit PHAs that are also State housing development agencies to carry out their financing functions in connection with project-based assisted units.

Section 882.712 Relocation

The Department has added provisions implementing the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601) (URA), as amended by the Uniform Relocation Act Amendments of 1987, title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1971 (Pub. L. 100-17, approved April 2, 1987). On February 19, 1988, HUD published an interim rule that, effective April 2, 1989, removed HUD's URA regulations and made the government-wide rule in 49 CFR part 24 applicable to all HUD-assisted programs subject to the URA. Section 882.712(b) of this interim rule further implements these policies by defining who are "displaced persons" for purposes of the project-based component of the Section 8 Certificate Program and providing that these displaced persons' eligibility for relocation assistance is subject to the requirements of 49 CFR part 24 (see final rule published on March 2, 1989, at 54 FR 8912). The URA requirements apply to both new construction and rehabilitation. To conform to the usage in HUD's other regulations relating to the URA and to temporary relocation, this section now uses the term "displacement" instead of "permanent displacement." This is a nonsubstantive change; "displacement" means a permanent and involuntary move from the project as a direct result of acquisition, rehabilitation, or demolition for an activity assisted under this subpart G.

Section 882.713 Other Federal Requirements

The environmental review requirements in this interim rule contain a significant change from the January 1989 interim rule. That rule (§ 882.713(b)), permitted a PHA to project-based assistance in connection with rehabilitated units without prior HUD environmental review if the PHA documented that the rehabilitation activity would not exceed specified environmentally-related thresholds and followed specified procedures to ascertain that the rehabilitation would

not trigger historic preservation requirements. This rule now requires that all environmental reviews for both new construction and rehabilitation be done by HUD (see § 882.713(b)). The Department has made this revision, in part, to respond to concerns raised by the Advisory Council on Historic Preservation that the authority granted PHAs by the January 1989 interim rule effectively constituted a delegation of HUD's responsibilities under section 106 of the National Historic Preservation Act of 1966 and the Council's regulations (36 CFR part 800). The Department is also concerned with the scope of the authority granted PHAs with respect to the environmental thresholds. The concern does not rest with the PHAs applying the categorical exclusions thresholds, because the thresholds should be readily ascertainable and easily documented. However, deciding whether there is reason to believe that, notwithstanding inclusion in these categorical exclusion thresholds, the project might have a significant environmental impact because of extraordinary circumstances can be a highly judgmental decision. The Department, on further consideration, believes it should make this decision in the first instance and not rely on the PHA to bring such circumstances to HUD's attention.

Paragraph (c)(8) contains a requirement that was not in the parallel section (§ 882.717) of the January 1989 interim rule. Paragraph (c)(8) refers to 24 CFR part 24, the Department's regulations excluding from participation in HUD programs contractors and participants that have been debarred, suspended, or placed under a limited denial of participation. This requirement applies to both new construction and rehabilitation.

Paragraphs (c)(9) and (c)(10) apply to new construction only. Paragraph (c)(9) requires compliance with 24 CFR part 791, which concerns local government review of applications for housing assistance. Part 791 implements the requirements of section 213 of the Housing and Community Development Act of 1974. (A conforming amendment has been made to 24 CFR 791.102.) Paragraph (c)(10) requires compliance with 24 CFR part 52, which concerns intergovernmental review of HUD programs and activities. Each of these regulations implement policies that are generally applicable to other construction programs administered by HUD.

Section 882.714 Initial Contract Rents

Under the January 1989 interim rule, a PHA established the initial contract

rents, but had to obtain HUD approval of these rents if the project would contain fifty or more project-based assisted units. The Department has considered the matter further and has decided that it should set the initial contract rents in every case. Experience with the Section 8 Moderate Rehabilitation Program—the other section 8 project-based assistance program in which PHAs establish initial contract rents—has indicated that rents in many instances are not being properly calculated, with the result that the initial contract rents are too high. Accordingly, this interim rule revises the provisions applicable to rehabilitation to provide that HUD sets the initial contract rents. HUD also sets the initial contract rents for new construction.

Section 882.714(b)(2) contains a provision (not in § 882.719 of the January 1989 interim rule) that clarifies that any request for initial gross rents, for units within a designated geographic area, exceeding the applicable Fair Market Rent by up to 20 percent must be supported by rental housing survey data that is statistically representative of rent levels. In addition, this section provides that any such request will not be approved where there is a soft market.

This section (see § 882.714(c)(3)) contains a provision (not in § 882.719 of the January 1989 interim rule) concerning establishing initial contract rents when the new construction or rehabilitation is financed with a HUD insured or coinsured mortgage. For these projects, in addition to meeting the other rent reasonableness requirements, the initial Contract Rent for each assisted unit may not exceed an amount determined by HUD to be necessary to amortize the insured or coinsured mortgage.

This rule contains policies concerning individual group residences (IGR) that were not in the January 1989 interim rule. Paragraph (e)(2) now requires that each family residing in an IGR unit execute a separate lease. Paragraph (e)(3) provides guidance on how to allocate gross rent in an IGR unit. It differs from the policies for the regular Certificate Program (§ 882.106(d)) by not allowing persons not receiving Section 8 assistance (other than resident assistants) to reside in an IGR with assisted families. Paragraph (e)(4) is the same as § 882.106(d)(3). It requires that consideration be given to the presence or absence of common (rather than private) cooking, dining, and sanitary facilities, and to the provision of special amenities or of maintenance or management services in determining the reasonableness of the rents.

Section 882.715 Contract Rent Adjustments

This section is the same as § 882.721 of the January 1989 interim rule. PHAs continue to make contract rent adjustments.

Section 882.716 Limitation on Housing Design and Amenities

This section is new and applies to both new construction and rehabilitation. It requires that housing assisted under subpart G be modest in design. The purpose of this requirement is to contain costs. It is comparable to modest design requirements in other project-based housing assistance programs. Under this requirement, the HUD Field Office would review applications to determine that amenities are limited to those amenities that are generally provided in unassisted, decent, safe, and sanitary housing for lower income families in the market area.

Section 882.720 PHA Unit Selection Policy

Paragraph (a), which is comparable to § 882.723(a) of the January 1989 interim rule, has been revised to require HUD Field Office review and approval of the PHA's unit selection policy. Paragraph (b)(1) provides additional unit selection policy requirements applicable to both new construction and rehabilitation. Paragraph (b)(2) lists the following factors that must be included in the PHA's procedures for selecting applications for either new construction or rehabilitation: site; design; previous experience of the owner and other participants in development, marketing, and management; responsiveness to local objectives specified by the PHA; and feasibility of the project as a whole (including likelihood of financing and marketability). The list is not exclusive and PHAs may add other factors they believe appropriate to their particular circumstances, and may also set the relative weight for each of the factors.

Paragraph (b)(3) specifies information that must be submitted to the PHA with the owner's application. These requirements apply to both new construction and rehabilitation.

Paragraph (c) permits a PHA to attach assistance to units without advertising or following the above selection factors, if the attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s). In certain circumstances, it may be desirable to provide project-based Certificate

Program assistance for a transitional period before tenants purchase the housing. The PHA's decision to project-base the assistance for these projects would be based in part on whether the project-basing would further the purposes of the sale to the resident management corporation. Because that consideration would not apply in the PHA's selecting of projects that do not involve resident management corporations, the Department has decided that it is appropriate to exclude these projects from the otherwise applicable advertising and unit selection factors.

Processing to HAP Agreement

Because this rule provides for greater HUD review of new construction projects than of rehabilitation projects, the provisions in the rule relating to this stage of processing have been separated for the two types of projects. In general, §§ 882.721 and 882.722 of this rule, which apply to rehabilitation, contain the same requirements for initial inspection, determination of eligibility, and work write-ups as did §§ 882.723(b) and 882.729(a) of the January 1989 interim rule. Under § 882.721(a), to conform to the unit selection policy changes discussed under § 882.720, above, the PHA must determine that the application is responsive to and in compliance with the PHA's written selection criteria and procedures. Section 882.721(b), requires a PHA to obtain HUD approval that the project complies with the limitation on housing design and amenities in § 882.716 and to submit a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy, and to conform to the environmental review changes discussed under § 882.713 above, requires a PHA to seek and obtain HUD environmental clearance before selecting a unit for assistance. Section 882.721(b) also expressly provides that HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements. Sections 882.723, 882.724, and 882.725, which apply to new construction, are discussed below.

Section 882.723 New Construction: PHA Evaluation and Technical Processing

Under this section, a PHA evaluates owners' new construction applications to determine whether they contain all of

the required documentation in the proper form, are responsive to and in compliance with the PHA's written selection criteria and procedures, whether the proposed initial contract rents are within the FMR limitations, and whether the applications meet HUD program policies and regulations.

The PHA submits to the Field Office those application determined by the PHA to be eligible for further processing. The PHA's submission must not exceed the number of units for which the PHA is authorized to project-base assistance, taking into consideration the number of units for which it intends to provide project-based assistance in connection with rehabilitation. The PHA's submission must include a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy. HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the Owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

Section 882.724 New construction: Field Office Review of Applications

The Field Office reviews each new construction application submitted by a PHA to determine compliance with the requirements concerning: Site and neighborhood standards in § 882.703; limitation on housing design and amenities in § 882.716; previous participation of the principals and other participants; local government review and consistency with the Housing Assistance Plan under 24 CFR part 791; intergovernmental review procedures in 24 CFR part 52; and environmental impact under the National Environmental Policy Act of 1969 in accordance with 24 CFR part 50 and under the related laws and authorities set forth in 24 CFR 50.4.

The HUD Field Office also determines the initial contract rents.

Section 882.725 New Construction: Working Drawings and Specifications

The owner must submit to the PHA the design architect's certification that the working drawings and specifications and proposed construction comply with HUD Housing Quality Standards, local codes and ordinances, and zoning requirements.

HAP Agreement and New Construction or Rehabilitation Period Housing Assistance Payments Contract Management

Generally, the sections under this heading are substantively the same as the parallel provisions in the January 1989 interim rule, with revisions to refer to new construction as appropriate. Section 882.732, however, contains a provision (not in § 882.731 of the January 1989 interim rule) that permits HUD to lower the initial contract rents to reflect any reduction in the amount necessary to amortize the mortgage, based on the cost method.

In addition, this rule (§ 882.740(b)) no longer requires that the HAP contract include a provision giving the owner a right to terminate the contract at the owner's sole option after two years. The two-year opt out provision could prevent housing that might otherwise qualify as replacement housing for public housing projects demolished or disposed of by a PHA under section 18 of the 1937 Act. (Section 18 requires that project-based assistance be for not less than 15 years to qualify as replacement housing.) Furthermore, the Department believes that a PHA should be able to expect that the assistance will be provided for the length of the HAP Contract before it expends the time and money to process applications for project-based assistance under subpart C.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which

implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with provisions of 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule does not alter the amount of funding a PHA may receive. The rule, in accordance with the statutory mandate, merely permits, but does not require, a PHA to attach a portion of the assistance it provides under the Section 8 Certificate Program to units rather than have the assistance move with the families.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct

effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule conforms HUD regulations to a statutory requirement to permit PHAs to provide project-based assistance to units in newly constructed structures. To the extent that particular revisions have altered responsibilities, these revisions are in response to statutory changes and have increased the discretion of the non-Federal governmental entities.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the rule concerns only a PHA's discretion to attach Certificate Program assistance to units. It does not affect the terms and conditions under which a family may qualify for assistance under the Certificate Program. The Certificate Program, itself, is a benefit to families because it assists eligible families to afford decent safe and sanitary housing.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. Currently approved requirements have been assigned the OMB Control Number 2502-0388.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

Existing requirements applicable program reference	Description of information collection	Form used	Estimated no. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.703—PHA application for HUD approval to attach assistance to units.	Total no. of units proposed for project-based by bedroom size and funding source w/end date; rehab period and proposed termination date of HAP contract.	No prescribed form	200 PHAs	2 hrs. (400 hrs.)	\$13.00 (average cost per hr. for PHA mgmt. staff).	\$5,200.00
882.709(b)(7) eligible properties	Flood hazards	Record of observation of insurance policy.	25 PHAs	¼ hr. (6.25 hrs.)	13.00	81.00
882.709(c) eligible property	Highrisers ineligibility	Letter request	5 PHAs	¼ hr. (1.25 hrs.)	13.00	16.00
882.711(b)—pledging contracts	Owner submittal of financial documents if pledging agreement or HAP contract as security for financing and PHA review.	Lender documents	10 projects	2 hrs. (20 hrs.)	13.00	260.00
882.712(c)(1)(i)—relocation	Relocation notice to family	Letter	10 owners	4 hrs. (40 hrs.)	13.00	520.00
882.713(c)(7) other Federal requirements.	Davis-Bacon	SF308, HUD-4230A, WH Pub 1321, WH-347, WH348, HUD-11.	150 owners	40 hrs. (6,000 hrs.)	13.00	78,000.00
882.713(b) other Federal requirements.	NEPA and historical preservation	File documentation	100 PHAs	4 hrs. (400 hrs.)	13.00	5,200.00
882.714(b)(2)(i)—FMR exceptions..	Approval of rents up to 110 percent FMR ..	Log or control mechanism.	40 PHAs	5 mins. or 0.083 hr. (3.3 hrs.)	13.00	43.00

Existing requirements applicable program reference	Description of information collection	Form used	Estimated no. of respondents	Hours per response plus (annual burden hours)	Average cost per PHA or owner per hour	Estimated cost annually
882.714(b)(2)(ii) & (iii)—FMR exceptions.	Requests for FMR exceptions up to 120 percent FMR.	Letter.....	10 PHAs.....	8 hrs. (80 hrs.)..	13.00.....	1,014.00
882.714(c)—rent reasonableness...	Certification of rent reasonableness (rents are established by project and not by unit).	No prescribed format for certification.	200 projects...	5 mins. or 0.083 hr. (3.3 hrs.).	13.00.....	217.00
882.715(a)(2)—Special rent adjustment.	Special adjustments—financial statements submitted by owner to support request for rent increase.	No prescribed form.....	10 owners.....	20 hrs. (20 hrs.).	13.00 (average cost per hr. for owner property mgmt. staff).	260.00
882.720(a)—PHA selection of units.	Adoption of written selection policy.....	No prescribed form.....	200 PHAs.....	5 hrs. (1,000 hrs.).	13.00.....	13,000
882.722—Work write-up requirement.	Work write-ups prepared by owners.....	No prescribed form.....	200 owners...	5 hrs. (1,000 hrs.).	13.00.....	13,000
882.732(d)—Notification of families on waiting list + vacancies.	Notification of families on waiting list of vacant units.	No prescribed form.....	50 projects.....	1/2 hr. per property (25 hrs.).	13.00.....	325.00
882.733(a) & (b)—Owner notification of completion.	Notification of evidence of completion submitted by owner.	200 owners...	5 hrs. (1,000 hrs.).	13.00.....	13,000
882.733 delayed completion.....	Written agreement pertaining to items of delayed completion.	No prescribed format.....	10 projects.....	2 hrs. (20 hrs.)..	13.00.....	260.00
882.740 HAP contract.....	HAP contract.....	Prescribed format.....	200 owners... 200 PHAs.....	1/4 hr. (50 hrs.).. 1/4 hr. (50 hrs.)..	13.00..... 13.00.....	650.00 650.00

New requirements applicable program reference ¹	Number of respondents	Frequency of response	Hours per response	Annual burden hours	Average hourly rate	Annual cost
Owner Application to PHA (882.720(b)(2)).....	100	1	120	12,000	\$13	\$156,000
PHA Letter Submitting Owner Applications to HUD (882.723 (b)).....	25	1	1/2	13	13	169
Owner Letter Submitting Working Drawings and Specifications to PHA (882.725).....	25	1	1/2	13	13	169
Additional Items for Owner's Evidence of Completion to PHA (882.733 (b)).....	25	1	1/2	13	13	169

¹ Total: 100 owners; respondents: 25 PHAs; Total annual burden hours: 12,039; Total annual cost: \$156,507.

This rule was listed as Sequence Number 1041 in the Department's Semiannual Agenda of Regulations published on October 30, 1989, (54 FR 44702, 44719) under Executive Order 12291 and the Regulatory Flexibility Act. (The Catalog of Federal Domestic Assistance Program number and title is: 14.156, Lower Income Housing Assistance Program (Section 8))

List of Subjects

24 CFR Part 791

Grant programs—Housing and community development; Intergovernmental relations; Housing.

24 CFR Part 882

Grant programs—Housing and community development; Housing; Low and moderate income housing; Mobile homes; Rent subsidies.

Accordingly, the Department amends 24 CFR parts 791 and 882 as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

1. The authority citation for part 791 is revised to read as follows:

Authority: Sec. 213, Housing and Community Development Act of 1974 (42 U.S.C. 1439); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 791.102, the last sentence in the definition of *Application for housing assistance* is revised to read as follows:

§ 791.102 Definitions.

* * * * *

Application for housing assistance. * * *

For the public housing and State agency programs and for project-based assistance in connection with new construction under part 882, subpart G of this chapter, the first application identifying a project site will be considered an application for housing assistance.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

3. The authority citation for part 882 is revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing

and Urban Development Act (42 U.S.C. 3535(d)).

§ 882.106 [Amended]

4. In § 882.106(a)(2), remove the phrase "and under paragraph (a)(2) of § 882.719" and add, in its place, the phrase "and under paragraph (b)(2)(i) of § 882.714"

5. Part 882, subpart G is revised to read as follows:

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

General

Sec.

- 882.701 Purpose and applicability.
- 882.702 Additional definitions.
- 882.703 Information to be submitted to HUD by the PHA concerning its plan to attach assistance to units.
- 882.704 HUD review of PHA plans to attach assistance to units.
- 882.705 Annual Contributions Contract; schedule of leasing.
- 882.706 Rehabilitation: Housing quality standards, including site and neighborhood performance requirements.
- 882.707 New construction: Housing quality standards and construction standards.
- 882.708 New construction: Site and neighborhood standards.

Sec.

- 882.709 Eligible and ineligible properties: Housing types.
- 882.710 Rehabilitation: Minimum expenditure requirement.
- 882.711 Prohibition against new construction or rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.
- 882.712 Relocation.
- 882.713 Other Federal requirements.
- 882.714 Initial Contract Rents.
- 882.715 Contract Rent adjustments.
- 882.716 Limitation on housing design and amenities.

Owner Application Submission to HAP Agreement

- 882.720 PHA unit selection policy.
- 882.721 Rehabilitation: Initial inspection and determination of unit eligibility.
- 882.722 Rehabilitation: Work write-ups.
- 882.723 New construction: PHA evaluation and technical processing.
- 882.724 New construction: HUD Field Office review of applications.
- 882.725 New construction: Working drawings and specifications.

HAP Agreement and New Construction or Rehabilitation Period

- 882.730 Agreement to Enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.
- 882.731 Owner selection of contractor.
- 882.732 New construction or rehabilitation period.
- 882.733 New construction or rehabilitation completion.

Housing Assistance Payments Contract

- 882.740 Housing Assistance Payments Contract (Contract).
- 882.741 Reduction of number of units covered by Contract.

Management

- 882.750 Responsibilities of the PHA.
- 882.751 Responsibilities of the Owner.
- 882.752 Obligations of the Family.
- 882.753 Family participation.
- 882.754 Maintenance, operation and inspections.
- 882.755 Reexamination of Family income and composition.
- 882.756 Overcrowded and underoccupied units.
- 882.757 Informal review or hearing.
- 882.758 Grounds for denial or termination of assistance.
- 882.759 Assisted tenancy and termination of tenancy.

Subpart G—Section 8 Certificate Program Assistance Attached to Units (Project-Based Certificate Assistance)

General

§ 882.701 Purpose and applicability.

(a) This subpart G establishes the procedures under which a Public Housing Agency (PHA) may, at its sole option, choose to provide Section 8 project-based assistance with funds

provided to the PHA for its Section 8 Certificate Program. This subpart G implements section 8(d)(2) of the 1937 Act, which directs the Department to permit a PHA to "attach to structures" up to 15 percent of the Section 8 assistance provided by the PHA under the Certificate Program. Within this 15 percent limit, the PHA may attach a Section 8 assistance contract to a structure where the owner agrees to construct or rehabilitate the structure other than with assistance provided under the United States Housing Act of 1937. The purpose of project-based assistance in the Certificate Program is to induce property owners to construct standard, or upgrade substandard, rental housing stock, and make it available to lower income families at rents within the Section 8 Existing Housing Fair Market Rents.

(b) This subpart G refers to assistance that is attached to units as "project-based" assistance to distinguish this assistance from the "tenant-based" assistance provided by the Certificate Program under subparts A, B, C, and F of this part and also by the Housing Voucher Program under 24 CFR part 887. With tenant-based assistance, the assisted unit is selected by the Family. The PHA then enters into an assistance Contract, which only covers a single unit and the specific assisted Family. If the Family moves out of a unit, the assistance contract terminates. The Family may move with continued assistance under the Program, and may find a new unit anywhere in the PHA jurisdiction. With project-based assistance, the PHA enters into an assistance Contract to make housing assistance payments for a specified term provided the unit is occupied by an eligible family. (The unit may be vacant for a limited time.) To fill vacant project-based units, the PHA refers families from its waiting list to the project owner. Because the assistance is tied to the unit, a family that moves from the unit does not have any right to continued assistance.

(c) Except as otherwise expressly modified or excluded by this subpart G, all provisions of subparts A and B of this part apply to project-based assistance under this subpart G.

(d) The following sections in subparts A and B of this part, which implement the tenant-based aspect of the Certificate Program, do not apply to project-based assistance under this subpart G: § 882.103, "Finders-Keepers" policy; § 882.208, *Activities to encourage participation by Owners and others*; and § 882.209(m), *Continued participation when Participant Family moves*. Other sections in this subpart G identify other

tenant-based provisions of subparts A and B of this part that do not apply to project-based assistance under this subpart G.

(e) HUD does not provide any separate funding for project-based assistance. Funding for project-based assistance is part of the ACC funding authority for the PHA's entire Section 8 Certificate Program.

§ 882.702 Additional definitions.

The following definitions apply to assistance subject to this subpart G, in addition to the definitions in § 882.102:

Agreement to Enter into Housing Assistance Payments Contract ("Agreement"). A written agreement between the Owner and the PHA that, upon satisfactory completion of the new construction or the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

15-Percent Limit. Fifteen percent of the total of the number of units under ACC for a PHA's Section 8 Certificate Program.

Funding Source. The ACC funding authority from which the HAP Contract is to be funded. Funding authority under the ACC that was appropriated by Congress before Federal fiscal year 1988 constitutes a single Funding Source, i.e., the pre-FY1988 Funding Source. For funding authority appropriated in Federal fiscal year 1988 and later, each funding increment identified in the ACC is a separate Funding Source.

§ 882.703 Information to be submitted to HUD by the PHA concerning its plan to attach assistance to units.

(a) **Requirements.** A PHA may attach assistance to units in accordance with this subpart G if:

(1) The number of project-based units in the PHA's Certificate Program does not exceed the 15-Percent Limit. The HUD-approved maximum number of units that may be project-based is based on the assumption that units in a PHA's Certificate Program that are identified as reserved but not under ACC will be under ACC before Agreements for project-based units are executed. The PHA, however, before entering into an Agreement for project-based units, must ensure that the number of project-based units does not exceed fifteen percent of the number of units actually under ACC for its Certificate Program.

(2) The number and unit sizes for units to which assistance will be attached are consistent with the number and unit size distribution for the Funding Source.

(3) The termination date for each HAP Contract term is within the ACC term for the Funding Source.

(b) *PHA notification to HUD of intent to attach assistance to units.* Before inviting Owner applications for project-based assistance, the PHA must submit the following information to the HUD Field Office for review. The PHA submission need not identify specific structures or units to be assisted. The PHA shall submit the following information:

(1) The number of units currently under ACC, plus the number of units reserved but not yet under ACC, for the PHA's Section 8 Certificate Program;

(2) The total number of units for which the PHA is requesting approval to attach assistance;

(3) The number of units by unit size (number of bedrooms) to be assisted from each Funding Source;

(4) The estimated termination dates for HAP Contracts to be executed for project-based subsidies, and the termination date of the ACC for the Funding Source for each HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.704 HUD review of PHA plans to attach assistance to units.

(a) *Purpose of review.* The HUD Field Office shall review the information submitted by the PHA under § 882.703(b) only to determine whether the requirements of § 882.703(a) are satisfied.

(b) *Notice to PHA.* (1) If the requirements of § 882.703(a) are satisfied, the Field Office shall authorize the PHA to proceed in accordance with this subpart G.

(2) The Field Office shall endeavor to notify the PHA of approval or disapproval within 20 calendar days after the date of the PHA submittal under § 882.703(b) (date of postmark, if mailed, or date of receipt by HUD, if hand-delivered).

(3) If the submission is approved, the Field Office shall notify the PHA that the PHA may enter into Agreements for project-based assistance, subject to the requirements of this subpart G. The approval letter shall specify the maximum number of units, by unit size and Funding Source, for which the PHA may execute Agreements, and shall specify, for each Funding Source, the ACC expiration date (last date of term). The HAP Contract term may not end after the ACC expiration date of the Funding Source from which the HAP Contract is to be funded.

(4) If any of the requirements of § 882.703(a) are not satisfied, the Field Office shall not approve the PHA submission. The Field Office shall notify the PHA by letter of the reasons for disapproval.

§ 882.705 Annual Contributions Contract; schedule of leasing.

Section 882.206, *Annual Contributions Contract; schedule of leasing*, applies. With respect to units assisted under this subpart G, the Field Office shall authorize the extension of the schedule of leasing (see § 882.206(c)) to accommodate the time needed to complete the new construction or rehabilitation of units that are under Agreement.

§ 882.706 Rehabilitation: Housing quality standards, including site and neighborhood performance requirements.

Section 882.404(b), *Site and neighborhood-performance requirements*, applies to rehabilitated units, in addition to the housing quality standards in § 882.109, or other standards approved by HUD.

§ 882.707 New construction: Housing quality standards and construction standards.

Section 882.109, *Housing quality standards*, applies to new construction units.

§ 882.708 New construction: Site and neighborhood standards.

Proposed sites for new construction units must be approved by HUD as meeting the following site and neighborhood standards:

(a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

(c)(1) The site must not be located in an area of minority concentration, except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families, in the income range to

be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) for further guidance on this criterion).

(3)(i) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, which, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for lower income minority families and in relation to the racial mix of the locality's population.

(ii) Units may be considered "comparable opportunities" if they have the same household type (elderly, handicapped, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for lower income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) Minority families have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for

minority families outside of areas of minority concentration.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher Programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need," however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower income persons.

(e) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(g) Except for new construction housing designed for elderly persons, travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§ 882.709 Eligible and ineligible properties: Housing types.

(a) Section 882.110, *Types of housing*, does not apply. Newly constructed and existing structures of various types may be appropriate for attaching assistance

to the units under this subpart G, including single-family housing and multifamily structures.

(b) A PHA may not attach assistance under this subpart G to units in the following types of housing:

(1) Housing that is owned by the PHA (or by an entity controlled by the PHA) administering the ACC under which assistance is to be provided;

(2) Housing that is HUD-owned;

(3) Housing for which the construction or rehabilitation, required to qualify for assistance under this subpart G, is started before HAP Agreement execution;

(4) Shared housing; nursing homes; and facilities providing continual psychiatric, medical, nursing services, board and care or intermediate care;

(5) Units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) Housing located in the Coastal Barrier Resources System designated under the coastal Barrier Resources Act; or

(7) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i)(A) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79); or

(B) Less than a year has passed since FEMA notification regarding such hazards; and

(ii) The PHA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(c) A PHA may attach assistance under this subpart G to a highrise elevator project for Families with children only if HUD determines there is no practical alternative. HUD may make this determination for a PHA's project-based assistance, in whole or in part, and need not review each project on a case-by-case basis.

(d) A PHA may attach assistance to units under this subpart G for use as single room occupancy (SRO) housing only if—

(1) The property is located in an area in which there is a significant demand for these units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the attaching of assistance to these units; and

(3) The PHA and the unit of general local government certify to HUD that the property meets applicable local health and safety standards.

(e) Assistance may not be attached to a unit that is occupied by an Owner; however, cooperatives are considered to be rental housing for purposes of this subpart G.

(f) For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured) or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent otherwise payable by the Eligible Family under this subpart G is less than the subsidized rent (which subsidy shall not be reduced on account of any assistance provided under this subpart G).

(g) In no event may any occupant of a unit with project-based assistance under this subpart G receive the benefit of any of the following: any other form of Section 8 assistance, rent supplement, Section 23 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.710 Rehabilitation: Minimum expenditure requirement.

To qualify as rehabilitation under this subpart G, existing structures must require a minimum expenditure of \$1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(a) Upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards;

(b) Repair or replace major building systems or components in danger of failure;

(c) Make improvements to the property essential to permit use of the property by handicapped persons; or

(d) Convert or merge units to provide housing for large Families.

§ 882.711 Prohibition against new construction or rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP Contract.

(a) Assistance may not be attached to any unit which was in the five years before execution of the Agreement, or will be, constructed or rehabilitated with other assistance under the U.S. Housing Act of 1937 (e.g., public housing (development or modernization), rental rehabilitation grants under 24 CFR part 511, housing development grants under 24 CFR part 850, or other Section 8 programs). In addition, a unit to which

assistance is to be attached under this subpart G may not be rehabilitated with flexible subsidy assistance under part 219 of this chapter. HUD may approve attachment of assistance to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s) where attachment of project-based assistance would further the purposes of the sale of the public housing project to the corporation.

(b) If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that the financing documents do not modify the Agreement or HAP Contract, and do not contain any requirements inconsistent with the Agreement or HAP Contract. Any pledge of the Agreement or HAP Contract must be limited to amounts payable under the HAP Contract in accordance with the terms of the HAP Contract.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.712 Relocation.

(a) *Prohibition against displacement of residential tenants from assisted units.* Constructing or rehabilitating units to be subsidized with assistance under this subpart G may not result in the displacement of residential tenants from the units to be subsidized. A residential tenant who is displaced, either through a waiver of this requirement or in violation of this requirement, may qualify as a displaced person under paragraph (b) of this section.

(b) *Uniform Relocation Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601) and governmentwide implementing regulations at 49 CFR part 24 set forth relocation assistance requirements that apply to displaced persons.

(1) For the purposes of this subpart G, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves permanently and involuntarily as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this subpart G. Displaced person includes:

(i) Any person required by the Owner to move permanently from the property

(building or complex) on or after the date that the Owner submits to a PHA an application to project-based assistance that is later approved and funded, unless:

(A) The person is evicted for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(B) The person moved into the property (building or complex) after the Owner's submission of the application but received prior written notice of the expected displacement; or

(C) The PHA determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project, and the HUD Field Office concurs in that determination.

(ii) A person required by the Owner to move permanently from the property (building or complex) before the Owner submits an application to project-based assistance, if the PHA or HUD determines that the displacement resulted from acquisition, rehabilitation, or demolition for the project.

(iii) A person who is temporarily relocated under the provisions of paragraph (c) of this section, but is not reimbursed for reasonable out-of-pocket expenses required by paragraph (c)(1)(iv) of this section and does not return to the property.

(2) The PHA may, at any time, request a HUD determination as to whether a displacement is covered by the URA.

(3) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR part 24.

(c) *Temporary relocation.* The following policies apply to temporary relocation of tenants from a property (building or complex). The policies apply only to lawful residential tenants (but not to owner-occupants or businesses) who are temporarily relocated following submission of the Owner's application to the PHA. The following policies do not apply to tenants who commence occupancy after the Owner's submission of an application if, before they commence occupancy, they are provided written notice from the Owner of the impending new construction or rehabilitation and possible temporary relocation, or whose tenancy is terminated for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement.

(1) Tenants may not be required to move temporarily from a property (building or complex) unless:

(i) The Owner has given the tenants advance written notice and appropriate advisory services;

(ii) Decent, safe, and sanitary temporary housing is available;

(iii) The temporary relocation period will not exceed 12 months; and

(iv) The Owner must reimburse tenants for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

(2) The PHA must ensure that all the temporary relocation requirements are met. Preliminary or ongoing administrative funds may be used for costs of PHA advisory services for temporary relocation of tenants to be assisted under the program.

(3) Tenants who do not believe they have received temporary relocation opportunities, services, or payments in accordance with this section may appeal to the PHA and must be given an informal hearing on this appeal.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.713 Other Federal requirements.

(a) *Equal opportunity and related requirements.* Participation in this program requires compliance with the Equal Opportunity requirements specified in § 882.111, with section 504 of the Rehabilitation Act of 1973, and with the Age Discrimination Act of 1975. The PHA must also comply with its equal opportunity housing plan.

(b) *Environmental requirements.* Activities under this subpart G are subject to HUD environmental regulations at 24 CFR part 50. A PHA may not attach assistance to a unit unless, before the PHA enters into an Agreement to provide project-based assistance for the unit, HUD has completed the environmental review required by part 50 of this title, including the applicable related laws and authorities under § 50.4, and HUD has notified the PHA of approval to proceed.

(c) *Other Federal requirements.* The following requirements must be met, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over \$10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the construction or rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

(8) The provisions of part 24 of this title relating to the employment, engagement of services, awarding contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(9) For an application involving new construction, local government review and consistency with the Housing Assistance Plan under 24 CFR part 791.

(10) For an application involving new construction, intergovernmental review procedures in 24 CFR part 52.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.714 Initial contract rents.

(a) *General.* Section 882.106, *Contract Rents*, does not apply. HUD approves the initial Contract Rents for all units to which assistance is to be attached under this subpart G.

(b) *Fair Market Rent limitation—(1) General.* The initial Gross Rent (initial Contract Rent plus any applicable Utility Allowance) for any unit approved under this subpart G shall not exceed the published Section 8 Existing Housing Fair Market Rent in effect for the unit on the date the Agreement is executed, except as provided in paragraph (b)(2) of this section.

(See also § 882.730(b), *Contract Rents in Agreement*)

(2) *Exception rents.* (i) Upon request from a PHA, HUD may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved by HUD under this paragraph (b)(2)(i) and by the PHA under

paragraph (a)(2) of § 882.106, *Contract Rents*, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program, unless HUD approves a higher percentage. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(ii) HUD may approve, upon request from a PHA, maximum initial Gross Rents for all units of a given size of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county, or similar locality. Any such request must be supported by rental housing survey data that is statistically representative of rent levels for the area. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives, and evidence of a market where the housing supply exceeds demand and a high rate of vacancies exists (soft market). HUD will not approve requests under this paragraph (b)(2)(ii) for units in a soft market. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(iii) On the basis of a showing by the PHA that special circumstances apply to units of a given size limited to a specific neighborhood, and by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and the units cannot be rented for less, HUD may approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. Approval under this paragraph (b)(2)(iii) shall be based upon substantially the same criteria as under paragraph (b)(2)(ii) of this section, except for the last sentence of that paragraph. Approval under this paragraph (b)(2)(iii) will not be granted for a neighborhood that is located in a soft market.

(c) *Rent reasonableness limitation.* (1) The initial Contract Rent must be:

(i) Reasonable in relation to rents currently being charged for units in the private unassisted market that are comparable to the newly constructed units or to the units after they are rehabilitated, taking into account the location, size, structure type, quality, amenities, facilities, and management and maintenance service of the unit; and

(ii) Not in excess of rents charged by the Owner for comparable unassisted units.

(2) For an assisted unit that is subject to local rent control, comparable units are rent-controlled units. However, for an assisted unit that is not subject to local rent control while it is assisted (regardless of whether the unit would be subject to such control if it were not assisted), comparable units are units that are not subject to rent-control.

(3) If a project is financed with a HUD insured or coinsured multifamily mortgage, then, in addition to meeting the other requirements of this paragraph (c), the initial Contract Rent for each assisted unit shall not exceed an amount determined by HUD to be necessary to amortize the insured or coinsured mortgage.

(d) *Congregate housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for a 0-bedroom unit, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining, and sanitary facilities and the provision of special amenities, maintenance or management services, or a combination of both.

(e) *Independent Group Residences.* (1) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased; for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(2) One Contract shall be executed for each Independent Group Residence. A separate Lease shall be executed for each Family that resides in an Independent Group Residence. A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent, or the Family's income eligibility.

(3) For purposes of determining the housing assistance payment for each Family, HUD shall allocate the Gross Rent, which is subject to paragraphs (b) and (c) of this section, among the total number of Families in the Independent Group Residence. To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other

than the Resident Assistant(s), if any, who may occupy no more than one bedroom. For example, if three Section 8 recipients and a Resident Assistant reside in a 4-bedroom unit, the housing assistance payment for each Section 8 recipient would be based on $\frac{1}{4}$ of the Gross Rent.

(4) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(f) *Single room occupancy units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraphs (b)(2)(ii) or (b)(2)(iii) of this section, the SRO exception rent shall be 75 percent of the exception rent that applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the initial rent exceed 75 percent of 120 percent (i.e., 90 percent) of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(g) *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.715 Contract Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a)(1) and (a)(2) of this section, upon request of the Owner. The unit, however, must be in Decent, Safe, and Sanitary condition, and the Owner must otherwise be in compliance with the terms of the Lease and the Contract. Subject to § 882.714(c) (the rent reasonableness limitation), adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (part 888 of this chapter) most recently published by HUD in the Federal Register.

(ii) Contract Rents are subject to post-audit change in accordance with HUD requirements, including the correction of

errors in establishing the initial Contract Rents or in adjusting the Contract Rents.

(2) *Special adjustments.* A PHA may make a special adjustment, subject to HUD approval, to reflect increases in actual and necessary expenses of owning and maintaining the unit that have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided in paragraph (a)(1) of this section. The Owner must submit financial statements to the PHA which clearly support the increase.

(b) Overall limitation.

Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.714(c)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.716 Limitation on housing design and amenities.

Housing assisted under this subpart G shall be modest in design. Amenities in these projects must be limited to those amenities, as determined by HUD, that are generally provided in unassisted, decent, safe, and sanitary housing for lower income families in the market area. The use of more durable, high-quality materials to control or reduce maintenance, repair and replacement cost is not considered an excess amenity.

Owner Application Submission to HAP Agreement

§ 882.720 PHA unit selection policy.

(a) *General.* The PHA must adopt a written policy establishing procedures for Owner submission of applications and for PHA selection of units to which assistance is to be attached and must submit the policy to the HUD Field Office for review and approval. The PHA must select units in accordance with its approved selection policy. PHAs are encouraged to establish preferences for units in troubled, HUD-insured subsidized multifamily projects, and for units to be used as limited equity cooperatives. The PHA's written selection policy must comply with the

requirements of paragraph (b) of this section.

(b) *Specific selection policy requirements.* The HUD-approved PHA's selection policy adopted by the PHA must provide for the following:

(1) The PHA's selection policy must provide that the PHA will advertise in a newspaper of general circulation that the PHA will accept applications for assistance under this subpart G for specific projects. The advertisement may not be published until after the later of HUD authorization to implement a project-based program or ACC execution. The advertisement must: run for a minimum of 30 days, specify an application deadline of at least 30 days, specify the number of units the PHA estimates it will be able to assist under the funding the PHA is making available for this purpose, and state that only applications submitted in response to the advertisement will be considered.

(2) The PHA's written selection policy must identify, and specify the weight to be given to, the factors the PHA will use to rank and select applications. These factors must include consideration of: Site; design; previous experience of the Owner and other participants in development, marketing, and management; and feasibility of the project as a whole (including likelihood of financing and marketability). The PHA may add other factors, such as responsiveness to local objectives specified by the PHA.

(3) The Owner's submission to the PHA of applications containing:

(i) A description of the housing to be constructed or rehabilitated, including the number of units by size (square footage), bedroom count, bathroom count, sketches of the proposed new construction or rehabilitation, unit plans, listing of amenities and services, estimated date of completion.

For rehabilitation, the description must describe the property as is and must also describe the proposed rehabilitation;

(ii) Evidence of site control, and for new construction identification and description of the proposed site, site plan and neighborhood;

(iii) Evidence that the proposed new construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that the needed rezoning is likely and will not delay the project;

(iv) The proposed contract rent per unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the

average monthly cost for each unit type for the first year of occupancy;

(v) Information concerning temporary relocation of site occupants and a certification from the Owner that there will be no displacement of residential tenants from units to be assisted under this subpart G;

(vi) The identity of the Owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties that would be a violation of the Agreement or the Contract; and information on the qualifications and experience of the principal participants. Information concerning any participant who is not known at the time of the Owner's submission must be provided to the PHA as soon as the participant is known;

(vii) The Owner's plan for managing and maintaining the units;

(viii) Evidence of financing or lender interest and the proposed terms of financing;

(ix) The proposed term of the contract; and

(x) Such other information as the PHA believes necessary.

(c) A PHA may select units to which assistance is to be attached, without advertising under paragraph (b)(1) of this section and without applying the selection factors otherwise required by paragraph (b)(2) of this section, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-_____)

§ 882.721 Rehabilitation: Initial inspection and determination of unit eligibility.

(a) Before selecting a unit, the PHA must determine that the application is responsive to and in compliance with the PHA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements, and that the proposed initial Gross Rents are within the Fair Market Rent limitation under § 882.714. The PHA must inspect the property to determine that the property meets the \$1000 per assisted unit rehabilitation requirement under

§ 882.710. If the property meets this rehabilitation requirement, the PHA must determine the specific work items that are needed to bring each unit to be assisted up to the Housing Quality Standards specified in § 882.706 (or other standards as approved in the PHA's application) and to complete any other repairs needed to meet the \$1000 per assisted unit rehabilitation requirement.

(b) Before selecting a unit, the PHA must seek and obtain HUD environmental clearance in accordance with § 882.713(b) and HUD approval that the project complies with the limitation on housing design and amenities in § 882.716, and must submit a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy. HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the Owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

(c) In addition to ascertaining whether the property meets the above rehabilitation requirement, the PHA must also consider whether the property is eligible housing within the meaning of § 882.709; meets the other Federal requirements in § 882.713 and the site and neighborhood standards cross-referenced in § 882.706; can be rehabilitated without causing displacement of residential tenants from units to be assisted (see § 882.712); and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with § 882.711. The PHA must also determine the number of current tenants that are lower income families.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.722 Rehabilitation: Work write-ups.

The Owner must prepare work write-ups and, where determined necessary by the PHA, specifications and plans. The PHA has flexibility to determine the appropriate documentation to be submitted by the Owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the PHA under § 882.721(a).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388)

§ 882.723 New construction: PHA evaluation and technical processing.

(a) The PHA must determine that the application is responsive to and in compliance with the PHA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements, and that the proposed initial Gross Rents are within the Fair Market Rent limitation under § 882.714. The PHA must also consider whether the property is eligible housing within the meaning of § 882.709; meets the other Federal requirements in § 882.713 and the site and neighborhood standards in § 882.708; and will be constructed with other than assistance under the U.S. Housing Act of 1937 in accordance with § 882.711.

(b) The PHA shall submit to the HUD Field Office those applications determined by the PHA to be eligible for further processing, and must submit a certification to the HUD Field Office stating that the unit or units were selected in accordance with the PHA's approved unit selection policy. The PHA's submission must not exceed the number of uncommitted units for which the PHA is authorized to project-base assistance in connection with new construction. If the number of units contained in applications the PHA has determined to be eligible for further processing exceeds the number for which the PHA is authorized to project-base assistance, the PHA may submit only the top-ranked applications. HUD may terminate the Agreement or HAP Contract upon at least 30 days written notice to the Owner by HUD if HUD determines that the units were not selected in accordance with the PHA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-_____)

§ 882.724 New construction: HUD Field Office review of applications.

(a) The HUD Field Office shall review the Owner applications submitted by a PHA to determine compliance with the requirements concerning:

- (1) Site and neighborhood standards in § 882.708;
- (2) Limitation on housing design and amenities in § 882.716;
- (3) Previous participation of the principals of the Owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members,

shareholders, investors, and other parties having a substantial interest;

(4) Local government review and consistency with the Housing Assistance Plan under 24 CFR part 791;

(5) Intergovernmental review procedures in 24 CFR part 52; and

(6) Environmental impact under the National Environmental Policy Act of 1969 in accordance with 24 CFR part 50 and under the related laws and authorities set forth in 24 CFR 50.4.

(b) The HUD Field Office shall determine the initial Contract Rents (see § 882.714(a)).

(c) The HUD Field Office shall advise the PHA whether an application meets the requirements referred to in paragraph (a) of this section. For any application that does not meet these requirements, the HUD Field Office shall specify the reasons why the application does not meet the requirements.

§ 882.725 New construction: Working drawings and specifications.

Before an Agreement is executed for new construction units, the Owner must submit the design architect's certification that the proposed new construction reflected in the working drawings and specifications comply with Housing Quality Standards, local codes and ordinances, and zoning requirements.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

HAP Agreement and New Construction or Rehabilitation Period

§ 882.730 Agreement to enter into Housing Assistance Payments Contract, and Contract Rents in Agreement.

(a) *Agreement.* The PHA must enter into an Agreement with the Owner in the form prescribed by HUD for assistance provided under this subpart G. The Agreement must be executed before the start of any new construction or rehabilitation, to be performed under the Agreement. Under the Agreement, the Owner agrees to construct the units in accordance with the PHA-approved working drawings and specifications or to rehabilitate the units in accordance with the PHA-approved work write-ups.

(b) *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with § 882.714, *Initial Contract Rents*) that will apply to the units after they are constructed or rehabilitated. The amounts of the Contract Rents that are listed in the Agreement or, if applicable, as lowered under § 882.732(c), shall be the initial Contract Rents upon execution of the

Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution the Contract Rents may be adjusted during the term of the Contract in accordance with § 882.715).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.731 Owner selection of contractor.

The Owner is responsible for selecting a competent contractor to undertake the new construction or rehabilitation work under the Agreement. The Owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor, to perform such work, that fails to provide a certification that neither it nor its principals is presently debarred, suspended, or placed in ineligibility status under 24 CFR part 24 or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR part 5. The PHA must promote opportunities for minority contractors to participate in the program.

§ 882.732 New construction or rehabilitation period.

(a) *Timely performance of work.* After the Agreement has been executed, the Owner must promptly proceed with the construction or rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA may terminate the Agreement or take other appropriate action.

(b) *Inspections.* The PHA must inspect during construction or rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carried out to ensure that the work meets the levels of materials specified in the work write-ups or working drawings and specifications, and meets typical levels of workmanship in the area.

(c) *Changes.* The Owner must obtain prior PHA approval for any changes from the work specified in the Agreement that would alter the design or the quality of the required new construction or rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on establishing lower initial Contract Rents in the amount determined by HUD. If the Owner makes any changes without prior PHA approval, the PHA may request HUD to lower the initial Contract Rents in the amount determined by HUD, and

may require the Owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial Contract Rents, however, shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason. When a HUD insured or a HUD coinsured multifamily mortgage is used to finance new construction or rehabilitation of the units to which assistance is to be attached under this subpart G, HUD may lower the initial Contract Rents to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage.

(d) *Notification of vacancies.* At least 60 days before the scheduled completion of the new construction or rehabilitation, the Owner must notify the PHA of any units expected to be vacant on the anticipated effective date of the Contract. The PHA must refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner must notify the PHA which units are vacant. (See also § 882.753).

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.733 New construction or rehabilitation completion.

(a) *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* To evidence completion of the work the Owner must furnish the PHA with:

(1) A certificate of occupancy or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The work has been completed in accordance with the requirements of the Agreement;

(ii) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(iii) The unit(s) has been constructed or rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) Unit(s) built before 1978 is in compliance with § 882.109(i) (*Lead-based paint*); and

(v) The Owner has complied with any applicable labor standards requirements in the Agreement.

(3) For projects where HUD construction inspection is not required during construction, a certification from the inspecting architect stating that the units have been constructed in accordance with the certified working drawings and specifications, Housing Quality Standards, local codes and ordinances, and zoning requirements.

(c) *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph (b) of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the Housing Quality Standards or other standards approved by HUD for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(d) *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the PHA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the PHA may accept the unit(s). The PHA must require the Owner to deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to ensure completion of the delayed items. The PHA and Owner must also execute a written agreement, specifying the schedule for completion of these items. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control numbers 2502-0388 and ———.)

Housing Assistance Payments Contract

§ 882.740 Housing Assistance Payments Contract (Contract).

(a) *Required form.* The PHA must enter into a Contract with the Owner in the form prescribed by HUD for assistance provided under this subpart G.

(b) *Term of Contract.* The Contract term may not be less than two years and may not extend beyond the ACC expiration date for the Funding Source. Within these limitations, the PHA has the sole discretion to determine the Contract term. For example, assuming that the ACC expiration date for the applicable Funding Source is June 30, 2003, and the effective date of a Contract will be July 1, 1989, that Contract could have a fixed term of 2 to 14 years.

(c) *Renewal of Contracts.* A Contract that is attached to a structure under this subpart G shall (at the option of the PHA but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial Contract and renewals shall not exceed 15 years.

(d) *Time of execution.* The PHA and Owner must execute the Contract if the PHA accepts the unit(s) under § 882.733. The effective date of the Contract may not be earlier than the date of PHA inspection and acceptance of the unit(s).

(e) *Units under lease.* After commencement of the Contract term, the PHA shall make the monthly housing assistance payments in accordance with the Contract for each unit occupied under lease by a Family.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2502-0388.)

§ 882.741 Reduction of number of units covered by Contract.

Section 882.512, *Reduction of number of units covered by Contract*, applies.

Management

§ 882.750 Responsibilities of the PHA.

Section 882.116, *Responsibilities of the PHA*, applies, except paragraphs (d), (f), and (j). The PHA must also:

- (1) Brief the Family in accordance with § 882.755(d);
- (2) Obtain requests for participation from Owners, and select projects;
- (3) Approve Contract Rent adjustments, and make rent reasonableness determinations;
- (4) Inspect the project before, during, and upon completion of, new construction or rehabilitation; and
- (5) Ensure that the amount of assistance that is attached to units is

within the amounts available under the ACC.

§ 882.751 Responsibilities of the Owner.

Section 882.117, *Responsibilities of the Owner*, applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement.

§ 882.752 Obligations of the Family.

Section 882.118, *Obligations of the Family*, applies; however, §§ 882.118 (a)(4) and (a)(5), which pertain to shared housing do not apply (because shared housing is not an eligible housing type under this subpart G).

§ 882.753 Family participation.

Section 882.209, *Selection and participation*, does not apply, except as it is expressly made applicable by this section.

(a) *Selection for participation.* Section 882.209(a)(1) does not apply. All other paragraphs in § 882.209(a) apply, except paragraphs (a)(4)(ii), (a)(4)(iii), and (a)(6). For purposes of this subpart G, a Family becomes a participant when the Family and owner execute a Lease for a unit with project-based assistance.

(b) *Determining eligibility of in-place Families.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible Family (including a Single Person) and the PHA selects the unit, the Family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the Family to be placed on the waiting list. (The PHA is authorized, under § 812.3(b)(1) of this chapter and consistent with other applicable requirements of § 812.3, to permit occupancy of the project by Single Persons residing in the project at the time of conversion to project-based assistance to prevent displacement.) A PHA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) *Filling vacant units.* (1) When the owner notifies the PHA of vacancies in the units to which assistance is attached, the PHA will refer to the Owner one or more Families of the appropriate size on its Section 8 Existing Housing waiting list. A Family that refuses the offer of a unit assisted under this subpart G keeps its place on the waiting list.

(2) All vacant units must be rented by the Owner to eligible Families referred by the PHA from its Section 8 Existing Housing waiting list. The PHA must determine eligibility for participation in accordance with HUD requirements.

(3) If the PHA does not refer a sufficient number of interested applicants on the PHA waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise for or solicit applications from eligible very low income Families, or, if authorized by the PHA in accordance with HUD requirements, lower income Families. The Owner must refer these Families to the PHA to determine eligibility.

(4) The Owner is responsible for screening and selection of tenants. The Owner may refuse any Family, provided the Owner does not unlawfully discriminate. If the owner rejects a Family and the Family believes that the rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue is not resolved promptly, the Family may file a complaint with HUD.

(d) *Briefing of Families.* When a Family is selected to occupy a project-based unit, the PHA must provide the Family with information concerning the tenant rent and any applicable utility allowance. The Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(1) Family and Owner responsibilities under the Lease and contract;

(2) Significant aspects of Federal, State, and fair housing law;

(3) The fact that the subsidy is tied to the unit and that the Family must occupy a unit constructed or rehabilitated under the program;

(4) The likelihood of the Family receiving Certificate after the HAP Contract expires;

(5) The Family's options under the program, if the Family is required to move because of a change in Family size or composition;

(6) The advisability and availability of blood level screening for children under seven years of age and HUD's requirements for inspecting, testing, and in certain circumstances, abating lead-based paint; and

(7) Information on the PHA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (under § 882.757), and of the procedures for requesting a hearing.

(e) *Continued assistance for a Family when the contract is terminated.* If the Contract for the unit expires or if the PHA terminates the Contract for the unit:

(1) The PHA must issue the assisted Family in occupancy of a unit a Certificate of Family Participation for assistance under the PHA's Certificate Program unless the PHA has determined that it does not have sufficient funding for continued assistance for the Family, or unless the PHA denies issuance of a Certificate in accordance with § 882.210.

(2) If the unit is not occupied by an assisted Family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit shall be used for the PHA's Certificate Program.

(f) *Amount of rent payable by Family to Owner.* Section 882.209(g), *Amount of rent payable by Family to Owner*, applies.

(g) *Lease requirements.* The Lease between the Family and the owner must be in accordance with § 882.759 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

§ 882.754 Maintenance, operation and inspections.

Section 882.211, *Maintenance, operation and inspections*, does not apply. Instead, paragraphs (a), (b), (c), and (d) of § 882.516, *Maintenance, operation and inspections*, apply.

§ 882.755 Reexamination of Family income and composition.

Section 882.212, *Reexamination of Family income and composition*, does not apply. Instead, § 882.515, *Reexamination of Family income and composition*, applies.

§ 882.756 Overcrowded and underoccupied units.

(a) Section 882.213, *Overcrowded and oversized units*, does not apply.

(b) If the PHA determines that a contract unit is not decent, safe, and sanitary because of an increase in Family size which causes the unit to be overcrowded or that a Contract unit is larger than appropriate for the size of the Family in occupancy under the PHA's occupancy standards, Housing Assistance Payments with respect to the unit may not be terminated for this reason. The Owner, however, must offer the Family a suitable alternative unit if one is available and the Family shall be required to move. If the Owner does not have available a suitable unit within the Family's ability to pay the rent, the PHA

(if it has sufficient funding) must offer Section 8 assistance to the Family or otherwise assist the Family in locating other standard housing in the PHA's jurisdiction within the Family's ability to pay, and require the Family to move to such a unit as soon as possible. The Family shall not be forced to move, nor shall Housing Assistance Payments under the Contract be terminated for the reasons specified in this paragraph, unless the Family rejects, without good reason, the offer of a unit that the PHA judges to be acceptable.

§ 882.757 Informal review or hearing.

(a) Section 882.216(a), *Informal review of PHA decision on application for participation*, applies, except §§ 882.216(a)(3)(ii), (a)(3)(iii), and (a)(3)(iv). In addition to the matters listed in § 882.216(a)(3)(i), the PHA is not required to provide an informal review, in accordance with § 882.216(a), to review the PHA's determination that the Contract unit is not appropriate for the Family size and composition under the PHA's occupancy standards.

(b) Section 882.216(b), *Informal hearing on PHA decision affecting participant Family*, applies, except § 882.216(b)(1)(iv) does not apply because there is no right to continued participation in the PHA program for an assisted Family that wants to move to another dwelling unit.

§ 882.758 Grounds for denial or termination of assistance.

Section 882.210, *Grounds for denial or termination of assistance*, applies, except that for purposes of this subpart G the grounds for denial of assistance in § 882.210(b) apply only to denial of participation in the program.

§ 882.759 Assisted tenancy and termination of tenancy.

(a) Section 882.215, *Assisted tenancy*, does not apply.

(b) *Term of Lease.* The term of a Lease, including a new Lease or a Lease amendment, executed by the Owner and the Family must be for at least one year, or the remaining term of the Contract if the remaining term of the Contract is less than one year.

(c) *Termination of tenancy.* (1) Subpart A of part 247 of this title, *Eviction from Certain subsidized and HUD-Owned Projects*, applies, except § 247.4(d).

(2) The Lease may contain a provision permitting the Family to terminate the Lease on not more than 60 days advance written notice to the Owner. In the case of a Lease term for more than one year, the Lease must contain a provision permitting the Family to terminate the

lease on such notice after the first year of the term.

(3) The Owner may offer the Family a new Lease for execution by the Family for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the Family written

notice of the offer at least 60 days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time for acceptance by the Family. Failure by the Family to accept the offer of a new lease in accordance with this paragraph shall be "other good

cause" for termination of tenancy (under § 247.3(a)(3)).

Dated: February 27, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90-5407 Filed 03-09-90; 8:45 am]

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Federal Register

**Monday
March 12, 1990**

Part III

Department of Transportation

Federal Aviation Administration

**14 CFR Parts 13, 47, 61, 91, and 183
Drug Enforcement Assistance; Notice of
Proposed Rulemaking**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 13, 47, 61, 91, 183****[Docket No. 26148, Notice No. 90-9]****RIN 2120-AD16****Drug Enforcement Assistance****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: The FAA proposes to revise certain requirements concerning registration of aircraft, certification of pilots, and penalties associated with registration and certification violations. This notice also announces new procedures for processing major repair and alteration forms that pertain to fuel system modifications. Actions announced in this notice respond to the Federal Aviation Administration Drug Enforcement Assistance Act of 1988. The proposed requirements and adopted procedures are intended to assist law enforcement agencies in their efforts to stop drug trafficking in general aviation aircraft.

DATES: Comments must be received on or before May 11, 1990.

ADDRESSES: Send or deliver comments on this notice in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, AGC-10, Room 916, 800 Independence Avenue, SW, Washington, DC 20591. Comments must be marked Docket No. 26148. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Earl F. Mahoney, Airmen and Aircraft Registry (AVN-400), Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 MacArthur Blvd., Oklahoma City, OK 73125, telephone (405) 680-7357.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26148." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background**History**

Drug trafficking has become a national crisis. Illegal drugs sold in the United States are often smuggled into this country in general aviation aircraft. Of the total volume of cocaine and marijuana seized in the United States, that seized from general aviation was 69% in 1984, 60% in 1985, 53% in 1986, and 64% in 1987. In 1987, 40,000 pounds of cocaine, \$13 billion worth in street value, were confiscated from general aviation aircraft. In 1988, 199,000 pounds of cocaine were seized from general aviation aircraft. This was 50% of all illegal drugs seized in that year. The Office of Technology Assessment of the United States Congress estimates that each year there are 1,300 to 3,500 drug smuggling flights that use general aviation aircraft, about 3.5 to 10 flights per day.

The law enforcement community faces increasingly overwhelming odds in its efforts to stop drug trafficking. Law enforcement personnel, facilities, and equipment have not been equal to the sophistication of drug trafficking operations. Law enforcement agencies have specifically expressed frustration over certain FAA procedures that they believe hinder enforcement efforts. These procedures concern registering

aircraft, certificating airmen, and filing major repair forms.

At the time these FAA procedures were established, drug trafficking in general aviation aircraft was not the serious problem that it is today. The procedures were devised in accordance with the Federal Aviation Act of 1958 (FA Act) and its objectives to promote the development and safety of air commerce.

In 1987, the FAA amended certain Federal Aviation Regulations (52 FR 34096; September 9, 1987) to assist the U.S. Customs Service (Customs) in narcotics interdiction. These amendments involved requirements for aircraft marking, aircraft identification data plates, and major repair forms.

In 1988, Congress conducted an extensive investigation into the role and responsibilities of the FAA in carrying out the 1984 Anti-Drug Trafficking Act and its amendments and in providing assistance to law enforcement agencies that enforce the Nation's drug laws. (See House of Representative Report 100-891.)

The Congressional findings resulted in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (Drug Enforcement Assistance Act), which the President signed on November 18, 1988 (Pub. L. 100-690). This act establishes the responsibilities of the FAA in assisting Federal, State, and local agencies involved in the enforcement of the Nation's drug laws. The Drug Enforcement Assistance Act amends the FA Act as follows:

(1) It amends section 103 to declare that it is a policy of the FAA to assist law enforcement agencies in the enforcement of laws that regulate controlled substances, to the extent consistent with aviation safety.

(2) It amends section 501 to authorize and direct the Administrator of the FAA to modify the aircraft registration system to more effectively serve the needs of buyers and sellers of aircraft, drug enforcement officials, and other users of the system.

(3) It amends section 602 to authorize and direct the Administrator of the FAA to modify the pilot certification system to more effectively serve the needs of pilots and drug enforcement officials.

(4) It amends section 605 to authorize and direct the Administrator of the FAA to modify the system for processing major repair and alterations of fuel tanks and fuel systems on aircraft, to more effectively serve users of the system, including drug enforcement officials.

(5) It amends section 313 to authorize the Administrator of the FAA to

establish and collect the fees necessary to cover the costs of issuing aircraft registration certificates, issuing airman certificates to pilots, and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

(6) It amends section 901 to authorize the Administrator of the FAA to pursue civil actions and assess civil penalties for violations of the regulations on aircraft registration and recordation of aircraft title documents.

(7) It amends section 902 to create criminal penalties for forgery of airman certificates, false marking of aircraft, and other aircraft registration violations and to make it unlawful for any person to knowingly and willingly operate an aircraft in violation of any requirement issued by the Administrator with respect to the display of navigation or anticollision lights.

The Drug Enforcement Assistance Act also requires the Administrator of the FAA to issue final regulations carrying out the objectives of the amendments on aircraft registration, airman certification for pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems on aircraft. Due to the complexity of the subject matter and the lead time required for such comprehensive rulemaking, the 10-month deadline has not been met. The FAA has not been able to issue final rules within the timeframe of the Congressional mandate. However, the FAA has accomplished certain non-rulemaking actions and has conducted briefings of industry groups, law enforcement agencies, and appropriate FAA divisions to inform these groups of possible FAA actions and to solicit information on specific needs and concerns of these groups.

Amendments to FAA regulations proposed in this document, as well as non-rulemaking changes in procedures, are intended to correct deficiencies identified in the Drug Enforcement Assistance Act. A discussion of non-rulemaking actions and proposed rulemaking requirements follows. The effective date of these proposed rules would be contingent on necessary appropriations and the time needed to update Airmen and Aircraft Registry equipment to handle the new requirements.

General Discussion of FAA Actions

Aircraft Registration

Section 501(a) of the FA Act states in part, "It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner * * *". In the

same section, the FA Act states that the Administrator "may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership" as prescribed.

The current regulations for aircraft registration require that an aircraft seller fill in the reverse side of the aircraft registration certificate with the name and address of the buyer and mail it to the Aircraft Registry in Oklahoma City. The buyer is to fill out and submit in person or by mail an application for aircraft registration along with evidence of ownership such as a bill of sale from the seller. Once the Aircraft Registry checks the application and supporting documents for legibility and compliance with part 47, it issues an aircraft registration certificate to the new owner. Issuance of an aircraft registration certificate typically takes 30 to 40 days if there are no complications. During this period (or for up to 90 days), the applicant may operate the aircraft by retaining a duplicate copy of the application. The applicant submits the other copies of the application and evidence of ownership to the Aircraft Registry. The retained copy, known as the pink copy, must be carried in the aircraft as evidence of temporary authority to operate the aircraft without a certificate of registration. The temporary authority is limited to operations within the United States. The final rule amending § 91.27(a)(2) to reflect this limitation (effective September 18, 1989) was published on August 18, 1989 (54 FR 34284). The amended provision will be renumbered; effective August 18, 1990, the requirement will be stated in § 91.203(a)(2). (The FAA also issued a notice of legal opinion on this subject on December 14, 1988 (53 FR 50208).)

The current requirements, including the operation of the aircraft by authority of the pink copy, were established to provide a smooth transfer of ownership that would not unduly restrict operation of the aircraft during processing of an application for registration. However, these procedures have permitted drug traffickers to obtain a certificate of registration on the basis of false information or to appear to have temporary authority to operate even though they have not applied for registration. The above-referenced legal opinion and the amendment to § 91.27(a)(2) provide an immediate remedy for many pink-copy abuses, thereby contributing significantly to the illegal drug interdiction effort.

The Drug Enforcement Assistance Act requires that in modifying the aircraft registration system, the Administrator of

the FAA address certain deficiencies in and abuses of the existing registration system. Among the deficiencies and abuses listed in the Act, those related specifically to registration are the following:

- (1) The registration of aircraft to fictitious persons.
- (2) The use of false or nonexistent addresses by persons registering aircraft.
- (3) The use by a person registering an aircraft of a post office box or "mail drop" as a return address for the purpose of evading identification of such person's address.
- (4) The registration of aircraft to corporations and other entities established to facilitate unlawful activities.
- (5) The submission of names of individuals that are not identifiable on applications for registration of aircraft.
- (6) The lack of a system to assure timely and adequate notice of the transfer of ownership of aircraft; and
- (7) The practice of allowing temporary operation and navigation of aircraft without issuance of a certificate of registration.

The FAA addresses each of these deficiencies by proposing to amend the regulations for aircraft registration that appear in 14 CFR part 47 and by changing the procedures for registering aircraft.

To address deficiencies and abuses concerning false information on applications, the FAA first considered requiring each applicant to submit a registration application in person to an FAA official or to a designated representative (such as a pilot examiner). The applicant would have been required to show positive identification that includes a recent photograph, name, street address, and identification number such as a driver's license number or tax identification number. The FAA official or designated representative would have verified the identification and completeness of the application, provided the applicant with a stamped temporary authority to operate, and mailed the application and supporting documents to the Aircraft Registry.

Because requiring an applicant to appear in person to an FAA official or designated examiner may create a burden to some applicants, the FAA also considered allowing an applicant to mail in a self-certified true copy of an applicant's photo ID. The true copy would be submitted along with the application and other documents. No face-to-face contact would be required. While this alternative would be more

convenient for applicants, it would be less effective in combatting false information by registrants.

Both of the above alternatives were rejected in favor of a compromise that would sufficiently tighten application procedures and requirements without creating an unnecessary burden on applicants. Under proposed § 47.31, an applicant would fill out and sign an application for aircraft registration (AC Form 8050-1). The current application form would be revised to require, in part, a driver's license identification number for an individual who has a driver's license or a tax identification number for other than an individual (such as a business). If an applicant uses a post office box or mail drop as the mailing address, the applicant must also provide a residential or business address.

The application would also contain a Certificate of True Copy/Identification Form (true copy/identification form) for certifying true copy of identification documents. The required identification documents for all applicants would be a photo ID of the applicant such as a driver's license, airman certificate, or passport. For a corporation, association, or partnership, the required identification would include, in addition to the photo ID of the signer of the application, a Certificate of Incorporation or other document showing that an applicant is a legal entity. An applicant (either individual or signer for a business) would appear before a notary public, another person authorized by law to administer oaths, or at an FAA office (as listed in proposed § 47.32(b)(2)) and present the required original identification document(s), a copy of the original identification document(s), and the true copy/identification form.

The notary or other official would verify that (1) the photograph on the original photo ID document is a likeness of the person who has presented the documents and (2) the copy of an original document is a true and complete copy of the original. Accordingly, the notary or other official would complete the true copy/identification form.

If the applicant has appeared before a notary or other person authorized by law to administer oaths, the applicant would mail or deliver all appropriate application documents to the Aircraft Registry. If the applicant has appeared at an FAA office, the FAA official would submit all application documents to the Aircraft Registry in a stamped envelope provided by the applicant.

Under proposed § 47.32, to obtain temporary authority to operate the aircraft until the Aircraft Registry issues

the aircraft registration certificate, an applicant checks a block on the Aircraft Registration Application requesting temporary authority to operate and may do one of the following:

(1) An applicant may submit a self-addressed stamped envelope or prepaid overnight envelope along with the documentation for registration. The Aircraft Registry would briefly review the application and documents, and if documentation appears complete, would issue a temporary authority form to operate the aircraft for 45 days. This brief review would not mean that the FAA has determined eligibility for registration, but only that the documents comply with application procedures.

(2) An applicant who submits the documents in person for verification to an FAA office (as listed in proposed § 47.32(b)(2)) may be issued immediately a temporary authority form to operate the aircraft for 45 days.

Temporary authority to operate would not be provided for aircraft not previously registered in the United States or to aircraft last registered in a foreign country because such aircraft will not have been determined to be airworthy. An airworthiness certificate is not issued until an original certificate of registration has been issued. Thus, in the interest of aviation safety, the owners of such aircraft would not be provided temporary authority to operate pending issuance of a certificate of registration.

Where temporary authority is permitted, it would be issued on a controlled form printed on certificate-quality paper with a special control number. These temporary authority forms would be available only from the appropriate FAA offices. This change in procedures would eliminate the type of abuse that has occurred with pink copy procedures.

If issuance of the Certificate of Aircraft Registration takes longer than 45 days (for example, in instances when the application is returned for correction or additional documentation is required) the Aircraft Registry would issue a Letter of Extension that would serve as authority to continue to operate the aircraft without registration. The letter would have to be carried in the aircraft with the temporary authority form. If for some reason the applicant does not receive the Certificate of Aircraft Registration nor a Letter of Extension before the temporary authority expires, the applicant would have to request and be issued a Letter of Extension in order to continue to operate the aircraft. It would be the responsibility of the applicant to have valid and current temporary authority in order to operate

the aircraft until he or she receives the Certificate of Aircraft Registration.

A temporary authority form would provide temporary authority to operate the aircraft only within the United States. Any applicant who wishes to fly the aircraft outside the United States without waiting the usual processing time for a registration certificate to be issued would have to request that the Aircraft Registry review the application on a priority basis. The Registry would expedite a complete review of the application and supporting documents and, if the documentation is satisfactory, would register the aircraft and issue a temporary certificate of registration for use by the applicant outside the United States. The temporary certificate of registration should not be confused with temporary authority to operate without registration. The temporary certificate of registration is a certificate in all respects, whereas temporary authority is merely permission to operate in the United States pending review of the aircraft registration application and supporting documents by the FAA Aircraft Registry. The temporary certificate of registration is usually transmitted by wire and has an expiration date to ensure that the certificate holder, upon receipt, properly places the original certificate inside the aircraft.

The FAA is proposing use of notaries to certify the identification copy because notaries are more accessible to or by applicants than FAA officials or designated representatives. However, the FAA does invite comment on this issue, since Registry experience has shown that incomplete notary certifications and the execution of notary certification by those with expired commissions increase the rate of rejection of submitted documents. The FAA also requests comments on proof of identification for businesses. Since not all businesses have a certificate of incorporation, the FAA would consider other documentation of proof but would like to standardize to the extent possible the kinds of proof that would be acceptable.

At an FAA briefing of industry on March 6, 1989, on the Drug Enforcement Assistance Act and the FAA's proposed implementation of the Act, an industry spokesperson raised an objection to eliminating the "fly away" authority now provided by current pink copy procedures. According to the objection, an individual may buy a plane at a location remote from an FAA office or during a time when FAA offices are not open. At present, such an individual could mail in the registration application

and fly the airplane home immediately on the temporary authority of the pink copy. Under the proposed rules such transactions would be impossible unless the FAA provides special provisions for 24- or 48-hour operation of the aircraft until the new owner obtains a temporary authority form. While the FAA considered procedures for allowing short-term temporary operation without a form, all such procedures seem susceptible to abuse. The Congressional Committee report specifically cites as a deficiency the "practice of allowing temporary operation and navigation of aircraft without issuance of a certificate of registration * * *". Even a 24- or 48-hour authority without FAA control would be sufficient to conduct drug hauls. The FAA also believes that aircraft purchases that require immediate operation of the aircraft during non-business hours or in remote

locations are not common occurrences since usually a buyer wants an aircraft title search done before a purchase. Title searches can only be accomplished during business hours at the Aircraft Registry. The FAA invites comment on this issue, specifically on how frequently sales occur over a weekend when the FAA facilities are closed, and suggestions for "fly away" procedures that would not be susceptible to abuse by drug traffickers.

Other changes proposed for registration application requirements are as follows:

Proposed § 47.13 adds a requirement that the name of each signer on an Aircraft Registration Application be typed or legibly printed. This requirement would assure that signers' names can be clearly determined from the application record

Current § 47.17, which lists fees for registration, would be revised to show new fees. New fees are discussed in the fee section of this preamble.

Proposed § 47.19 would add the provision that applications may be delivered to an FAA office under the provisions of § 47.32. Current address requirements for mailing or delivery of applications to the Aircraft Registry would be updated.

Proposed § 47.63 on Dealer's Certificates would require that an applicant for a Dealer's Certificate comply with § 47.31 (a)(3), (a)(4), and (b). This would require that an applicant appear before a notary or at an FAA office with the required identification documents.

Sample registration and certification forms are presented in Figures 1-3 of this document.

BILLING CODE 4910-13-M

Figure 1

UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION MIRE MONROE AERONAUTICAL CENTER

AIRCRAFT REGISTRATION APPLICATION

(1) UNITED STATES REGISTRATION NUMBER M _____ CERT. ISSUE DATE _____ EXPIRATION DATE _____
AIRCRAFT MANUFACTURER AND MODEL _____
AIRCRAFT SERIAL NUMBER _____ THIS BLOCK FOR FAA USE ONLY

(2) TYPE OF REGISTRATION (check one box) (3) PURPOSE OF APPLICATION (check one box)
____ Individual ____ Co-owner ____ Initial Registration ____ Renewal of registration
____ Partnership ____ Government ____ Request for replacement certificate. I hereby certify that my certificate has been ____ lost, ____ stolen, or
____ Corporation or Association ____ Non-Citizen Corporation ____ mutilated. (Check one)
____ Reporting change of address. I hereby certify this is an actual address and the address is not being changed
to confuse the true location of the certificate holder.

(4) AIRCRAFT USER CERTIFICATION (Check box and show certificate number if applicable)
____ I/we certify the aircraft is used to provide air transportation as defined in 49 U.S.C. 1301(10). The FAA assigned air carrier or air taxi certificate number is _____.

(5) NAME OF APPLICANT (Person(s) shown on evidence of ownership. If individual, give last name, first name, and middle initial.) (NAME MUST BE TYPED OR PRINTED.)

ADDRESS (Permanent mailing address for first applicant listed.) TELEPHONE NUMBER: (_____) _____
Number and street: _____ Apartment, Suite,
P. O. Box _____ Rural Route: _____ Box: _____
City: _____ State: _____ Zip Code: _____

(6) LOCATION OF APPLICANT'S RESIDENCE OR BUSINESS. Complete this section if a post office box or mail drop is used as the mailing address. This does not apply to rural routes.

(Street and number, building name, airport, highway intersections, county roads, or other description.)

(City, State, Zip)

(7) ATTENTION: READ THE FOLLOWING STATEMENT BEFORE SIGNING THIS APPLICATION. THIS PORTION MUST BE COMPLETED. A false or dishonest answer to any question in this application may be grounds for punishment by fine and/or imprisonment (U.S. Code, Title 18, Sec. 1001 and 49 U.S. Code 1472(b)(1)).

CERTIFICATION

I/WE CERTIFY:

(1) That the above aircraft is owned by the undersigned applicant, who is a citizen (including corporations) of the United States, or

CHECK ONE AS APPROPRIATE:

- a. ____ A resident alien, with alien registration (Form 1-151 or Form 1-551) number _____;
b. ____ A non-citizen corporation organized and doing business under the laws of (State) _____, and said aircraft is based and primarily used in the United States. Records for flight hours are available for inspection at _____; and
(Street address or location, city and state)

(2) That the aircraft is not registered under the laws of any foreign country.

(8) THIS APPLICATION MUST BE SIGNED IN INK BY THE APPLICANT in accordance with Part 47 of the Federal Aviation Regulations.

Check here if the following certification is applicable. ____ I hereby certify that as applicant, I do not possess either a driver's license nor a Taxpayer Identification Number.

SIGNATURE (If executed for a co-ownership, all applicants must sign. Use reverse side of application if necessary.)	TITLE	EACH INDIVIDUAL SIGNING MUST SHOW DRIVER'S LICENSE NUMBER AND STATE OF ISSUE. IN ADDITION CORPORATIONS, ASSOCIATIONS, OR PARTNERSHIPS MUST SHOW FEDERAL TAX IDENTIFICATION NUMBER (TIN).	DATE
TYPE OR PRINT NAME BELOW EACH SIGNATURE			
Signature _____		TIN _____ AND	
Typed or Printed Name _____		LICENSE NUMBER _____	
		ISSUING STATE _____	
Signature _____		TIN _____ AND	
Typed or Printed Name _____		LICENSE NUMBER _____	
		ISSUING STATE _____	
Signature _____		TIN _____ AND	
Typed or Printed Name _____		LICENSE NUMBER _____	
		ISSUING STATE _____	

Figure 2

ATTENTION: THIS MUST BE COMPLETED AT AN FAA OFFICE, OR BY A NOTARY PUBLIC OR OTHER PERSON AUTHORIZED BY LAW TO ADMINISTER OATH.

(Complete either certification, as appropriate)

CERTIFICATION AS TO TRUE COPY/IDENTIFICATION

For an individual:

In the State of _____

County of _____

I hereby certify that I have examined an original document, a copy of which is attached hereto bearing my certification as to true copy. The photograph appearing on the original document is a likeness of the person who has appeared before me and has identified (himself)(herself) to me as (Mr.)(Mrs.)(Miss)(Ms.) _____

Date: _____

Name (Type or print) _____

Signature _____

Address _____ City _____ State _____

(Complete below if appropriate)

My commission expires: _____ Seal: _____

=====

CERTIFICATION AS TO TRUE COPY/IDENTIFICATION

For a Corporation, Association, or Partnership:

In the State of _____

County of _____

(1) I hereby certify that I have examined either an original document, or a copy certified by the issuing authority, a copy of which is attached hereto bearing my certification as to true copy, and

(2) I hereby certify that I have examined an original document, a copy of which is attached hereto bearing my certification as to true copy. The photograph appearing on the original document is a likeness of the person who has appeared before me and has identified (himself)(herself) to me as (Mr.)(Mrs.)(Miss)(Ms.) _____

Date: _____

Name (Type or print) _____

Signature _____

Address _____ City _____ State _____

(Complete below if appropriate)

My commission expires: _____ Seal: _____

Figure 3

NUMBER

T _____

TEMPORARY AUTHORITY TO OPERATE AIRCRAFT WITHOUT REGISTRATION
(Operation within the United States only)

Registration Number _____ (check one)

Aircraft Manufacturer and Model _____ Initial registration by this applicant.

_____ Reregistration by this applicant.

Serial Number _____

Type of Registration (check one)

____ Individual ____ Partnership ____ Corporation or Association ____ Co-owner

____ Government ____ Non-Citizen Corporation

Name of Applicant(s) _____

ADDRESS (Permanent mailing address for first applicant listed.)

Number and street: _____

P. O. Box _____ Rural Route: _____ Box: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: (____) _____

FAA IDENTIFICATION

(date)_____
(signature)(FAA Official)_____
(FAA Office)

AUTHORITY TO OPERATE

Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 45 days from the above date, during which time this form must be carried in the aircraft.

Aircraft Reregistration and Periodic Registration

Currently, an aircraft registration certificate does not expire. Occurrences that result in a registration becoming ineffective are listed in current § 47.41(a). Occurrences that result in an invalid registration are listed in § 47.43. Upon termination of registration by operation of law as specified in § 47.41(a), or by agency determination as specified in § 47.43(a), the certificate of registration with the reverse side completed is to be returned to the Aircraft Registry. The Registry in turn updates the aircraft records to indicate the registration status.

In some instances, the Aircraft Registry is not notified of an aircraft sale or of a registration otherwise becoming ineffective and hence the aircraft registration records do not show the current registration status of such aircraft.

In an effort to maintain current information, present § 47.51 requires an owner of a registered aircraft that has had no activity for the past 36 months to complete and submit to the Aircraft Registry a triennial aircraft registration report. If there has been a change in registered owner information, such as a change in current name, address, aircraft identification, or citizenship status, the returned form is to reflect that change. The form is also used to report the sale, destruction, or other disposition of aircraft.

The Drug Enforcement Assistance Act listed two deficiencies in current requirements and procedures regarding aircraft status and currency of information:

(1) The large number of aircraft that are classified as being in "sale-reported status"; and

(2) The lack of a system to assure timely and adequate notice of transfer of ownership.

The Committee report states that about 17,000 aircraft (out of about 300,000) are in "sale-reported" status, which means the FAA has received some indication of a sale but the aircraft has not been registered to the new owner. Under such circumstances, law enforcement agencies are unable to locate the current owner.

Timely and adequate notice of transfer of ownership is the responsibility of the parties involved. The seller is responsible for returning the certificate of registration to the FAA with the reverse side completed. The new owner is responsible for submitting an application and evidence of ownership in compliance with part 47, if the owner intends to operate the

aircraft. The Registry does not hold up registration if the seller has failed to submit the old certificate, but the Registry cannot register an aircraft without the submission of the appropriate documents by the new owner.

Primary reasons that registration is sometimes delayed are:

(1) Documents of transfer are submitted but are not in compliance with parts 47 and 49.

(2) The Registry is not notified of a transfer.

(3) The aircraft is purposely not registered by the new owner because the new owner does not intend to operate it (for example, the owner intends to do considerable work on the aircraft before registering it and flying it, or because the owner has purchased the aircraft with the intention of reselling it without ever operating it). In such cases the Registry may not be notified. It is not unusual for a chain of documents to be submitted when an aircraft is registered showing several ownership transfers between the last registered owner and the present applicant.

In order to address the deficiencies identified by Congress, the FAA considered: (1) requiring registration of all aircraft regardless of whether an aircraft is to be operated; (2) periodic renewal of aircraft registration; (3) increased follow-up actions on "sale-reported" aircraft; and (4) clarification of the requirements for notifying the Aircraft Registry of sales.

The FAA has rejected the first option of requiring registration of all aircraft regardless of whether or not an aircraft is to be operated. Such a requirement would need additional legislation, be difficult to enforce, and would not significantly help enforcement agencies. The FAA considers that, in combination, the other three options will increase the accuracy and completeness of information on aircraft registration.

Accordingly, the FAA is proposing (§ 47.46(a)) a 3-year expiration for any certificate of aircraft registration issued after the effective date of the rule. Before the expiration date on a certificate, the Aircraft Registry would notify the owner of an impending expiration. The registrant would mail in an application, a renewal fee, and a notarized copy of recent identification of the owner.

Although law enforcement representatives who testified in Congressional Committee hearings suggested annual aircraft registration, the FAA is proposing a 3-year renewal, based on its experience with the triennial validation program. Given the number of aircraft and the rate of

ownership transfers and other registration changes, a 3-year renewal seems appropriate for maintaining current information. Since renewal of aircraft registration will require that an applicant appear before a notary or FAA official, the 3-year renewal would impose less of a burden on applicants than an annual renewal requirement.

Under proposed § 47.46(b), any aircraft registered before the effective date of the rule would have to be reregistered. Such aircraft would be reregistered over a 3-year period. The FAA is allowing a 3-year phase-in of reregistrations to provide an orderly and manageable transition to the new registration form and procedures. Specific dates for reregistration have not been established; the FAA does not know at this time when the proposed rule could take effect, since the issuance of the new aircraft registration certificates will require increased and improved automation at the Aircraft Registry. A 3-year phase-in schedule would be established and issued as part of the final rule. In accordance with the schedule a holder of a certificate of registration would apply for reregistration during specific dates between the effective date and 36 months after the effective date, depending on the month of issuance. For example, a holder of a certificate issued in January of any year might be required to apply for reregistration between April 1 and June 30 of the year the rule takes effect; for a certificate issued in February application might be made between July 1 and September 30, etc. The applicant would submit a reregistration application and would comply with proposed § 47.31, except for paragraph (a)(2) of that section, which requires submission of evidence of ownership.

The term "reregistration" is used in this document to refer to the procedures for issuing new registration certificates to aircraft that were registered before the effective date of the rule. The term "renewal," when referring to aircraft registration, is used to refer to periodic (3-year) registration required for any aircraft that has a certificate of registration with an expiration date (i.e., a certificate issued after the effective date of the rule).

In accordance with proposed § 47.46(c), an applicant for renewal would be required to apply 45 days in advance of the expiration date on the certificate to allow receipt of a new certificate before expiration of the old certificate. As a convenience, the Aircraft Registry would issue reminder notices and appropriate forms to

certificate holders 60 days in advance of expiration dates. However, the applicant would be responsible for obtaining a valid certificate before the expiration date of an old certificate. A certificate of aircraft registration would be ineffective as of the date following the expiration date on the certificate. Failure to apply in time would result in the aircraft being grounded until a new certificate is issued or the owner requests temporary authority to operate until the new certificate is issued.

Certain conveyances affecting title of an aircraft (i.e., bill of sale, lien document, or other instrument affecting title) are eligible for recordation under part 49 only if the aircraft is registered. If a registrant misses either the reregistration date or a renewal date, the registration certificate would no longer be effective. After the expiration date, no new conveyances on the aircraft would be eligible for recordation until a new certificate of registration had been issued.

All certificates issued after the effective date of this rule would be issued on non-forgable and machine-readable paper. This would assure that information on a certificate could not be altered, that a certificate could not be forged, and that machine-readable information (such as the owner's name, aircraft registration number, aircraft serial number, make and model of aircraft) could be used by Customs to ascertain how many flights an aircraft has made in and out of the United States.

Requiring renewal of registration would ensure more current information in the Registry's data base and would result in termination of registration for any aircraft that has an expired registration certificate. If law enforcement agencies discover that an aircraft is being operated without a current registration certificate, under the law, they may seize the aircraft, and the owner and operator of the aircraft are subject to penalties.

In accordance with the proposed reregistration and renewal requirements, current § 47.51, on the triennial aircraft registration report, would be deleted.

Proposed § 47.39 revises current requirements to clarify that an aircraft is registered on the date that the Aircraft Registry determines that the requirements of Part 47 have been complied with. The effective date of registration is shown as the date of issuance on the certificate. This revision codifies the existing practice and clarifies that registration is not effective as of the date an application and

supporting documentation are received at the Aircraft Registry.

In addition, § 47.41(a) would be revised to specify that a certificate of registration is effective until its expiration date or until the final date for registration for current certificates, which do not have an expiration date. Proposed § 47.41(b) would require a registrant to submit the certificate of registration for an aircraft with the reverse side endorsed to the Aircraft Registry within 10 days after the sale of that aircraft or other event as specified in proposed § 47.41. In the event of the death of the holder of the certificate, the administrator of the estate or other party as specified in the proposed rule must submit the certificate within 60 days. The intent of this proposed requirement is to emphasize and clarify that the certificate should be submitted to the Aircraft Registry directly after a sale or other event. Not only is the return of a certificate important for maintaining current records, but it is in the registrant's interest to relinquish responsibility for the aircraft's operation after a sale or other event resulting in termination of registration. Failure to submit a certificate properly endorsed after transfer or other event resulting in termination of registration could result in civil penalties.

Proposed § 47.45 would require that an applicant applying for issuance of a certificate because of change of address must comply with proposed § 47.31(b) identification procedures.

The proposed rule would revise current § 47.49 on replacement certificates by requiring that requests for replacement of lost or mutilated certificates be submitted in writing and that the requests be accompanied by the documents required in proposed § 47.31(b), plus the required fee. An Aircraft Registration Application may be used to request a replacement certificate. Procedures for obtaining a temporary certificate of registration pending receipt of a replacement certificate would not change from current procedures.

Sale-Reported Status

In addition to proposing the above requirements, the FAA is taking non-rulemaking actions for those aircraft in a "sale-reported" status. A "sale-reported" status in the automated aircraft records indicates to an FAA conveyance examiner that the Registry has received some evidence that a sale has occurred.

Approximately 1050 aircraft records are placed in a sale-reported status each month as a result of correspondence, bills of sale, and returned certificates of

registration from sellers. Approximately 80% of all sale-reported records are processed and the aircraft registered to new owners. The remaining 20% (2,520 a year) either do not comply with the regulations or do not receive the Registry's request for registration information because of incorrect mailing addresses. These aircraft are not registered aircraft.

Many records had been in sale-reported status for a number of years as a result of the Registry's annual revalidation program. This was a mailing to every aircraft owner requiring an owner to report changes of address, changes of ownership, deaths, etc. If the report was not returned to the Registry, an aircraft certificate was revoked. During this program, many aircraft were reported sold but the reported new owners did not respond to letters from the Registry requesting that they register. When the revalidation program was discontinued in 1977, many aircraft records were in a sale-reported, administratively suspended, or a certificate-revoked status, and have remained so. These aircraft are not registered aircraft.

In 1980, a triennial program was implemented. As mentioned earlier, this is a 3-year revalidation program that seldom results in revocation of registration. A percentage of the annual mailouts (6,272 reports are mailed monthly to manage the workflow) are returned reporting that an aircraft has been sold. In FY-88, the mailout totaled 75,264 with 7% (an average of 440 per month) returned indicating that aircraft had been sold. These aircraft are given a sale-reported status.

Approximately 10 percent of the forms mailed by the Registry are completed and returned with updated information. Approximately 5 percent are undelivered because of incorrect addresses.

To clean up the large number of records that are in a sale-reported status, examiners at the Aircraft Registry will review sale-reported records and cancel registration for those that have had no activity for three years or longer. This effort is expected to eliminate 70 to 80% of the sale-reported records. The remaining 20 to 30% of the sale-reported records will be phased out by mailouts, telephone calls, and review of pending files.

Assignment of Aircraft Identification Numbers

In accordance with the Convention on International Civil Aviation, called the Chicago Convention of 1944, "Every aircraft engaged in international air

navigation shall bear its appropriate nationality and registration marks." The United States complies with this requirement by issuing U.S. registration numbers (commonly called "N-numbers") to all registered aircraft, whether the aircraft are used for international or domestic flights. U.S. registration numbers must be painted on aircraft in compliance with 14 CFR Part 45. The procedures for requesting and obtaining numbers are covered in 14 CFR Part 47.

Current § 47.15 states that an applicant for registration must place a "U.S. identification number (registration mark)" on the application and on all supporting documents. All newly manufactured aircraft are assigned registration numbers; all aircraft previously registered in a foreign country that are being brought into the U.S. register are assigned registration numbers. If a U.S.-registered aircraft is sold within the United States, the aircraft retains its registration number unless the new owner requests a new number or the seller requests keeping the number for use on another aircraft.

In accordance with § 47.15(f), special registration numbers are assigned by the Aircraft Registry upon request and submission of a \$10.00 fee. A special registration number can be reserved for use at a later time. A number can be reserved indefinitely by paying \$10.00 annually. Current regulations and procedures allow frequent changes in registration numbers. It is common for a registration number to be changed when there is a change in ownership of an aircraft.

The Drug Enforcement Assistance Act identifies the following deficiencies in the assignment of registration numbers for aircraft:

- (1) The ability to make frequent changes in the registration markings assigned to the aircraft.
- (2) The use of false registration markings on aircraft.
- (3) The illegal use of 'reserved' registration markings on aircraft.

To address these problems the FAA considered eliminating special registration numbers altogether. Newly manufactured and imported aircraft would be assigned registration numbers that would remain with the aircraft for the life of the aircraft or until the aircraft was exported. However, the FAA is reluctant to eliminate special numbers because experience has shown that the aviation community considers this a desirable service.

The FAA also considered allowing a number change only at the time ownership of the aircraft is transferred. However, at the FAA briefing of the

aviation community, a person requested that the FAA allow a change in registration number when a special number becomes available. According to the request, at the time of ownership transfer, a desired number may not be available but may become available later, and the owner should be allowed to request that special number at that time.

The FAA is therefore proposing in § 47.15(d) that a request for a special number be allowed once during ownership of an aircraft. The request may occur at the time of transfer or at any other time that a desired number becomes available. A request for a registration number change must be in writing and must be accompanied by the fee for a special registration number. If a seller wants to retain the registration number that is currently assigned to the aircraft, a written request to reserve the number must accompany the buyer's Aircraft Registration Application. The written request to reserve the number must be signed by both the seller and the buyer. If the seller retains a number and the buyer requests a new special registration number at the same time, a separate fee must be submitted for each. If the buyer accepts a number assigned by the Registry, no N-number fee would be charged to the buyer. Current regulations and procedures for assignment of numbers to newly manufactured aircraft and to imported aircraft would not change.

Current § 47.15(f) would be revised to specify the time within which a certificate holder must affix a special registration number after the Registry has assigned it to the aircraft. Currently, a certificate holder must notify the Registry within 5 days after affixing the special registration number to the aircraft. In addition to the 5-day requirement, the proposed revision would allow the certificate holder 90 days to paint the special registration number on the aircraft and return the appropriate form to the Aircraft Registry. If the Registry does not receive the notification form within 90 days, the number may not be used without the applicant again requesting and receiving approval for using it. If a number is painted on the aircraft but the notification form is not returned to the Aircraft Registry, the special number assignment and the certificate of aircraft registration would become invalid.

Proposed § 47.15(i) would be added to the requirements to clarify that a registration number is effective only as long as the registration is effective. The registration number also ceases to be effective if an aircraft is sold and not registered within 3 years, if a

registration certificate expires, or if a certificate holder has not reregistered the aircraft or renewed registration in accordance with the proposed reregistration and renewal requirements. Under such circumstances an applicant would have to apply for a new registration number. While in most instances the old number may still be available, the Registry would not be responsible for retaining the number for use on that aircraft.

In addition, the FAA proposes to change its procedure for reserving special numbers that have not been assigned to an aircraft. The Registry has encountered instances when a request for information on the availability of a certain number is made by phone. Later the available number is painted on an aircraft. The owner either has misunderstood the procedure for assigning a registration number or has intentionally used an available number illegally. To prevent misuse of reserved registration numbers, no information on availability of registration numbers will be given over the telephone.

No fees would be charged for assignment of a registration number selected by the Registry. Fees would continue to be charged for reserving special numbers and assigning special numbers; however, such fees would not increase.

Section 91.203 (revised September 18, 1989; 54 FR 34284; formerly § 91.27) would be amended by deleting the reference to the "second pink copy of the Aircraft Registration Application" and replacing it with a reference to the "temporary authority to operate," which would be provided in proposed § 47.32(b).

Pilot Certification

Section 602 of the FA Act authorizes the Administrator of the FAA "to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft." In accordance with the FA Act any person may file an application for an airman certificate. If the Administrator finds that the person possesses the qualifications and capabilities to perform the duties of the airman certificate sought, the Administrator shall issue the certificate "containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters" as the Administrator determines are necessary to ensure safety in air commerce.

In accordance with the FA Act each airman certificate "shall be numbered

and recorded" by the Administrator, and "shall state the name and address of, and contain a description of, the person to whom the certificate is issued; and shall be entitled with the designation of the class covered thereby."

Regulations pertaining to the requirements for obtaining pilot and flight instructor certificates appear in 14 CFR part 61. The current regulations and procedures for obtaining a pilot's certificate usually require that an applicant pass a written examination and a flight or practical examination. A pilot's certificate is issued by the Airmen Certification Branch, part of the Airmen and Aircraft Registry in Oklahoma City. The applicant submits an application for a certificate and supporting documents to a designated pilot examiner, who in turn submits the application to an FAA Flight Standards District Office for review; alternatively, the applicant may appear before an FAA inspector in the District Office. The District Office forwards the documents to the Airmen Certification Branch, where the documents are reviewed for compliance with the regulations. If the documents are accepted, a certificate is issued and mailed to the airman.

The Drug Enforcement Assistance Act amends section 602 of the FA Act to authorize and direct the Administrator to modify the system for issuing airman certificates to pilots "to make the system more effective in serving the needs of pilots and officials responsible for enforcement of laws relating to the regulation of controlled substances." The modifications must address the following identified deficiencies:

- (1) The use of fictitious names and addresses by applicants for such certificates.
- (2) The use of stolen or fraudulent identification in applying for such certificates.
- (3) The use by a person applying for such a certificate of a post office box or "mail drop" as a return address for the purpose of evading identification of such person's address.
- (4) The use of counterfeit and stolen airman certificates by pilots.
- (5) The absence of information concerning physical characteristics of holders of such certificates.

The current regulations on pilot certification primarily concern qualifications. Administrative procedures for issuance of a certificate are covered in the regulations by the statement "on a form and in a manner prescribed by the Administrator" (§ 61.13(a)). Internal guidance governing issuance of pilot certificates is contained in FAA Order 8710.4,

Certification: Pilots and Flight Instructors and in FAA Order 8430.6C, Air Carrier Operations Inspector's Handbook. However, these orders do not provide specific guidance with respect to procedures for identification of applicants. Accordingly, the FAA issued Action Notice No. 8700.2 (a temporary internal order), which became effective on November 1, 1989, that requires all designated examiners and FAA inspectors to require an applicant for any airman certificate to present positive identification at the time of application. This identification must include a photograph of the applicant, the applicant's signature, and the applicant's actual residential address.

Acceptable types of identification will include, but not be limited to, driver's licenses, government ID cards, passports, and other forms of ID that meet the personal identification requirements.

The inspector or examiner may disapprove an application if the applicant fails to provide proper identification or if the inspector or examiner believes the identification is fraudulent. Inspectors and examiners will be alerted to watch for any indication of fraudulent or altered forms of identification, or any other irregularity which may indicate that an applicant has falsely represented his or her identity. Any such indications are to be reported immediately to the nearest Civil Aviation Security Field Office or Regional Civil Aviation Security Division.

The new procedures implemented by Action Notice No. 8700.2 are intended to eliminate the use of fictitious names and addresses, stolen or fraudulent identifications, and use of post office box or "mail drop" addresses only. These new procedures are needed to reduce the possibility that pilot certificates will be erroneously issued as a result of fraudulent activity by applicants or by those claiming to be an applicant. In addition, the new procedures are required to ensure that applicants meet eligibility requirements specified in the Federal Aviation Regulations, such as age requirements. These procedures apply to all airmen, rather than only to pilots, since the problem of fraudulent identification occurs for all categories of airmen. The procedures are a minimal burden since they require only that an applicant for an airman certificate present personal identification to an examiner or inspector when applying.

In addition, rule revisions are proposed in this notice to correct remaining deficiencies in the airman

certification system for pilots. These proposed revisions reflect proposed modifications in application procedures and certificate forms. Under the proposed system, all pilot certificates would consist of two parts: Part A, the Airman Identity Card, would contain basic identifying information (name, address, identification number, etc.) and a photograph of the applicant. It would be credit card size, machine readable, and non-forgable. It would have an expiration date requiring renewal every 3 years. Part B, the rating and limitation portion of the certificate, would be basically the certificate that is now issued. It would list the pilot certificate number, ratings, and limitations. It would not have to be renewed on a periodic basis, but would be reissued as it is now, when new ratings are acquired. It would be issued on non-forgable paper similar to Part A.

In accordance with proposed § 61.3(a), both parts of the pilot certificate would have to be carried by a pilot when he or she is exercising the privileges of the certificate. Certificate privileges could not be exercised without possession of both parts of the certificate or after the expiration date on the airman identity portion of the certificate.

After the effective date of the rule, in addition to procedures that would require an applicant for a pilot certificate to show personal identification to the flight instructor or FAA inspector, an applicant would have to submit a recent passport-type photograph of the applicant that will be reproduced on the airman identity card portion of the certificate.

Under proposed § 61.19(c), the airman identity card portion of a pilot certificate would expire at the end of the 36th month after the month in which it was issued. Under proposed § 61.20 a pilot would be responsible for renewing the airman identity portion of his pilot certificate before the expiration date. The FAA will mail a renewal application to each holder of a pilot certificate in sufficient time for the certificate holder to complete and return the application and receive the new airman identity card portion of the certificate before the expiration date. Renewal procedures would require that a pilot submit by mail to the Airmen Certification Branch a renewal application, fee, code word identification (such as mother's first name), and recent photograph. If a holder of a pilot certificate does not receive a renewal form from the FAA, the holder of the pilot certificate must obtain a renewal application from a Flight Standards District Office, pilot

examiner, or the Airmen Certification Branch and must complete and submit the application to the Airmen Certification Branch. After reviewing the renewal application, if the Airmen Certification Branch determines that a question exists regarding the identification of the airman, it may require that the applicant appear in person at his or her nearest FAA District Office in order that face-to-face identification can be made.

The FAA considered tying renewals of pilot certificates to medical examination requirements, so that pilots who are required to have a medical examination every 2 years could apply for renewal every 4 years, at the time of their medical examination. However, the FAA decided not to require face-to-face procedures for renewals, and therefore saw no purpose in tying renewals to the time-frame of medical examinations. The FAA decided that a 3-year renewal for pilot certificates would satisfy law enforcement needs and be consistent with aircraft registration renewals.

In this document the term "renewal," when referring to pilot certificates, is used to mean a periodic (3-year) issuance of a pilot certificate required for any pilot who has a pilot certificate with an expiration date (i.e., a certificate issued after the effective date of the rule). The term "reissuance" is used to mean issuing new pilot certificates to replace pilot certificates that were issued before the effective date of the rule.

In accordance with proposed § 61.18, all pilot certificates that were issued before the effective date of the rule would expire 36 months after the effective date. A pilot with a certificate that has no expiration date would have to apply for reissuance of a certificate before the end of the 36th month after the effective date. Application procedures for reissuance would require that an applicant submit an application, fee, and recent passport quality photograph to a designated Aviation Medical Examiner (AME), FAA Flight Standards District Office, or designated pilot examiner. At the time of submission, the applicant would have to show personal identification, such as a driver's license or other acceptable photo ID. The examiner or inspector would verify identification and forward the materials to the Airmen Certification Branch.

The FAA decided that the burden to pilots of applying for reissuance would be minimal, if AME's, in addition to FAA Flight Standards District Offices and designated pilot examiners, could process reissuance applications. Active pilots, other than glider or free balloon

pilots, must have a medical examination every 6 months, 1 year, or 2 years, depending on the class of medical certificate required. Thus a pilot could plan to apply for reissuance at the pilot's next medical examination after the effective date of the rule. The pilot would have to bring the required personal identification and an application for reissuance obtained from the AME or from the FAA to the medical examination.

To allow for an orderly transition to the new certificate form, the FAA would establish a schedule for reissuances. In effect, the proposed schedule establishes dates before which certain groups of certificates would have to be renewed. As proposed in § 61.18, the schedule would conform to the following:

(1) Within 1 year after the effective date, all pilots who fly into or out of the United States would have to have a new certificate. Since these pilots could not be notified by the FAA, they would need to initiate application for the new certificate. Failure to do so would mean that they could not fly into or out of the United States.

(2) Within 2 years after the effective date, all pilots who were issued a certificate in an odd-numbered year before the effective date would have to have a new certificate. The FAA would send notices to these pilots.

(3) Within 3 years after the effective date, all pilots who were issued a certificate in an even-numbered year before the effective date would have to have a new certificate. The FAA would send notices to these pilots.

Regardless of the schedule a pilot may apply for reissuance any time after the effective date. As stated previously, a convenient time to apply would be at the pilot's first medical examination after the effective date of the rule, if the pilot holds a medical certificate. All pilot certificates without an expiration date would automatically expire three years after the effective date.

Failure to apply for reissuance of a certificate or failure to renew a certificate before its expiration date would not require a certificate holder to requalify for the certificate. The certificate holder may submit an application for reissuance or renewal at any time, along with required documentation, to the appropriate FAA representative. If the documentation is acceptable, the Airmen Certification Branch would reissue or renew the certificate as appropriate. A pilot would not be permitted to exercise the privileges of the certificate until the pilot receives the new certificate.

Fees would be charged for new, reissued, and renewed certificates as of the effective date of the rule. Fees are specified in the fee section of this preamble and in proposed § 61.30.

The proposed rules and related procedures would apply to private, commercial, and airline transport certificated pilots only, not to student pilots. Student pilots are not being included because the student pilot certificate has restrictions that preclude its use in flights into or out of the U.S. Student pilot certificates are issued by AME's (issuance of a student pilot certificate is reviewed for compliance by the Aeromedical Certification Division) and may be used for 2 years after the date of issuance. After the effective date of the rule, once a student pilot applied for a pilot certificate (normally within the 2-year period of the student pilot certificate), the applicant would have to comply with the proposed rules and procedures.

The proposed rules do include glider, balloon, and recreational pilots. These pilots can add ratings to and remove limitations from their certificates. Therefore, it is important for the FAA to obtain positive identification at the time of initial application and to require that they have a new certificate with an airman identity card. For reissuance of balloon and glider pilot certificates, an applicant would more likely go to a Flight Standards District Office or designated pilot examiner, since these pilots are not required to have medical certificates. The Airmen Certification Branch would notify these pilots separately of reissuance dates. However, they could apply for reissuance of a certificate before their scheduled reissuance dates.

The proposed rule also contains amendments to other sections of part 61 and to part 183 that are needed for conformance with new procedures.

Section 61.17(a) would be revised to allow 60 days for operating with a temporary certificate rather than the current 120 days. The new temporary certificates would be issued on controlled forms provided to FAA Flight Standards District Offices and to pilot examiners. The forms would have a control number to allow FAA monitoring of the use of the form. Shortening the time allowed for use of the temporary certificate is expected to expedite processing of certificate applications. Currently applications are not always submitted directly upon issuing a temporary certificate. The proposed revision is not expected to impose any burden on pilots.

Section 61.5 would be amended by replacing the words "pilot certificate" with "the rating card portion of each pilot certificate."

Section 61.11(c) regarding issuance of a pilot certificate on the basis of a foreign pilot license would delete the sentence referring to issuance of pilot certificates without expiration dates, since this would become obsolete. Section 61.75 would be revised to require applicants for a certificate issued on the basis of a foreign license to meet the application requirements and procedures for a pilot certificate.

Sections 61.29 and 61.60 would be amended to require that applicants who request a new certificate, because the original certificate has been lost or destroyed or because of a change of address, must do so in writing and must provide name, signature, date of birth, mother's first name, and other identifying information, as well as any required fee. It should be noted that a certificate should show a current permanent address. If the address on a certificate is not the airman's current address, the airman must notify the Airmen Certification Branch so that the current address is on record as soon as possible. Under the proposed rule, until the airman receives the new certificate, he may use the certificate with his previous address.

Current § 61.77(e)(4) would be amended to change the 24-month expiration requirement on special purpose certificates to 36 months. This would make special purpose certificates consistent with other pilot certificates.

Section 183.21 would be revised by adding a paragraph (f), which adds to the AME responsibilities that of accepting applications for and verifying identity of applicants who are applying for reissuance of a pilot certificate.

The FAA believes that these changes in certification requirements and procedures would correct problems identified by drug enforcement officials. They would provide positive identification of an applicant and a photograph of the pilot, and would generally provide more current information on pilots. In addition, all airman identity card portions of certificates would be machine-readable by equipment in use by Customs at its points of entry. This would allow for comparison of information on the certificate with data in the Treasury Enforcement Communications System (TECS). This data base, managed by the Treasury Department, contains information on convicted felons, suspects, look-out lists, as well as previous arrivals at points of entry.

The FAA considered certain alternative features to the proposal. One alternative was to place both the pilot identification information and pilot ratings on one document. The FAA rejected this solution because it would have required a document of at least passport size, which would probably be opposed by the general aviation community. It seemed more practical to issue two separate wallet-size parts to a certificate and to require that a pilot carry both when exercising the privileges of the certificate. The FAA invites comments on this issue.

The FAA also considered and rejected the concept of a pilot certificate bearing fingerprints as well as a photograph of the pilot. For the FAA to require fingerprints would be costly, both in time and money, would pose numerous practical problems, and would provide only a slight increase in effective pilot identification.

Alterations of Fuel Systems

Drug traffickers sometimes modify an aircraft's fuel system to extend the aircraft's range. In recognition of this, in 1987 the FAA revised 14 CFR part 43, appendix B: § 91.27(c); and § 91.173 (c) and (d) (52 FR 34096; September 9, 1987) to require aircraft with fuel system modifications to have a copy of the accepted approval form (FAA Form 337) on board the aircraft at all times and available for inspection by FAA or Customs personnel. In instances when an aircraft under suspicion either does not have the required document or is unattended and cannot be searched, law enforcement personnel need to know if the aircraft record maintained at the Aircraft Registry shows that a fuel system modification has been approved. In the past this information was not always available because of deficiencies in filing such forms.

In most instances, a Form 337 is required to be submitted to FAA Flight Standards District Offices by the person performing the modification. The District Office is required to forward the forms to the Aircraft Registry within 48 hours of receipt. The Aircraft Registry converts the form into microfiche and files the form as part of the aircraft record as soon as possible. Because the Aircraft Registry has focused its resources on registration and recordation functions for the past several years, it has accumulated a backlog of approximately 300,000 Form 337's. Only a small percentage of these relate to fuel system modifications.

Under current procedures, to determine whether the FAA has been notified that alterations to the fuel system of an aircraft have been made,

an investigator would have had to request the entire aircraft record and examine any Form 337 filed on the aircraft. The investigator would also have had to examine the backlog of forms that are in order of registration number to determine if a form had been submitted but not filed in the record. This would be a lengthy manual process.

The Drug Enforcement Assistance Act amends section 605 of the FA Act to authorize and direct the Administrator of the FAA to modify the system for processing forms for major repairs or major alterations of fuel tanks and fuel systems of aircraft to make the processing of such forms better serve the needs of law enforcement officials. The Act requires that changes to the processing system address the following deficiencies:

(1) The lack of a special identification feature to permit such forms to be easily distinguished from other major repair and alterations forms.

(2) The excessive amount of time required for receiving such forms at the Airmen and Aircraft Registry of the Federal Aviation Administration.

(3) The backlog of such forms that are awaiting processing at the Airmen and Aircraft Registry.

(4) The lack of ready access by law enforcement officials to information contained on such forms.

On November 28, 1988, the FAA issued an Action Notice (FAA Order A8600.1) requiring each FAA Flight Standards District Office to review any Form 337 received and to send any form that involved a fuel tank system modification to a special section in the Aircraft Registry by first class mail within 24 hours of receipt. The Aircraft Registry updates the automated records to show that such a Form 337 has been received, the date a modification was performed, and a description of the modification. The information in the data bank is accessible through computer terminals by aircraft registration numbers. After updating, the Aircraft Registry adds the forms to the microfiche aircraft record. A field in the automated aircraft record is tagged to indicate that a Form 337 pertaining to fuel system modification is on record.

Any time an inquiry that involves a backlogged Form 337 results in locating a fuel system modification, that form will be keyed into the automated system and put on microfiche in the aircraft record. Eventually all Form 337's will be screened and those pertaining to fuel system modification will be entered into the automated system and filed in the aircraft microfiche record.

Applicability

The procedures specifically targeted by the Drug Enforcement Assistance Act are those concerned with (1) the issuance of certificates of registration of aircraft; (2) the issuance of airman certificates to pilots; and (3) the processing of forms for major repairs or major alterations of fuel tanks and fuel systems. In addition, section 7214 of the Drug Enforcement Assistance Act states:

This subtitle (including any amendments made by this subtitle) shall only apply to aircraft which are not used to provide air transportation (as defined in Section 101 of the Federal Aviation Act of 1958).

In accordance with section 101 of the FA Act, operations that are not included under the definition of "air transportation" are intrastate common carriage, private carriage for compensation or hire (not held out to the general public), and private aircraft operation (typically individual owner/pilots). Therefore, the amendments of the Drug Enforcement Assistance Act apply only to aircraft used for such operations.

The intent of the above exclusion appears to be to limit the effect of the Act to aircraft that are used in what is commonly referred to as "general aviation." The focus of the Committee report on the Act is on drug trafficking in general aviation aircraft. "General aviation" is not defined in the FA Act but has been used historically (within and outside the FAA) to refer to small airplane operations, which include private aircraft operators and fixed based operations that combine air taxi, pilot instruction, and airplane sales. This latter category of general aviation is considered "air transportation" under the definition in the FA Act and is therefore excluded from the Drug Enforcement Assistance Act even though the type of aircraft used in such operations is also used for drug trafficking.

The exclusion also creates a problem in implementing the Act. In effect it requires the FAA to maintain separate procedures for registration of aircraft used in air transportation and aircraft used in other than air transportation. This distinction can be difficult to discern, especially in the cases of small operators who conduct operations in both air transportation and general aviation. In comparison to establishing one uniform system for all aircraft, a dual system would cost more and be less efficient.

Therefore, to the extent possible, the FAA is proposing one uniform, modernized, efficient system of

registration procedures for all aircraft. Registration, reregistration, and renewal procedures will apply to all aircraft whether used to provide air transportation or not. Under Title V of the FA Act, the FAA already has the authority to institute these procedural changes without the specific mandate of the Drug Enforcement Assistance Act. Aircraft used to provide air transportation will, however, not be subject to the fees authorized by the Drug Enforcement Assistance Act and the penalty provisions of the Act. (See later discussion on fees and enforcement.)

On the subject of airman certification, the Drug Enforcement Assistance Act specifically focuses on changes needed in issuing pilot certificates. Therefore, the proposed rule and procedural changes associated with the rule would affect pilots only. Procedures outlined in the action notice for identification of airmen affect all airmen. Student pilots are excluded because of the restrictions that are imposed on student pilot certificates.

It should be noted that while applicability of the Act regarding the issuance of airman certificates is limited to pilots, all other sections of the Act that reference airmen, without making a distinction between types of airmen, apply to all airmen. Section 7209 of the Act, for instance, sets out criminal penalties for certain violations involving airmen and does not limit applicability to pilots.

Fees

The Drug Enforcement Assistance Act is specific on the increases of existing fees and the establishment of new fees. Low fees are now charged for aircraft registration certificates (\$5.00), dealer's registration certificates (\$10.00), special registration numbers (\$10.00), and changed registration numbers (\$10.00). The fees have not been increased since 1964 though the cost of providing the services has significantly increased. An applicant for a pilot's certificate does not currently pay a fee.

The Drug Enforcement Assistance Act specifically allows for charging fees for certain services not to exceed the following:

- (1) \$12.00 for an airman's certificate to a pilot;
- (2) \$25.00 for registration of an aircraft after transfer of ownership;
- (3) \$15.00 for renewal of an aircraft registration;
- (4) \$7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

Under the Act, the amounts established shall be adjusted by the

Administrator in proportion to changes in the Consumer Price Index. The fees collected "shall be credited to the account in the United States Treasury from which expenses were incurred by the Administrator for carrying out titles V and VI of this Act and shall be available to the Administrator for paying expenses for which such fees are collected."

The Drug Enforcement Assistance Act also amends the Airline Deregulation Act. The Airline Deregulation Act restricted fees to those that were in effect on January 1, 1973 (no new fees without Congressional approval), and to increases in such fees only in proportion to changes in the Consumer Price Index since 1973. The Drug Enforcement Assistance Act amends the Airline Deregulation Act to allow for the fees specified in the Drug Enforcement Assistance Act.

Accordingly, the FAA is proposing to increase aircraft registration fees and to establish new fees for pilot certificates up to the limits allowed by the Drug Enforcement Assistance Act. Actual fees may be lower than these proposed fees once the FAA has determined the cost of implementing the new procedures.

Since increasing fees for aircraft registration certificates for any aircraft used in air transportation is not allowed under the Drug Enforcement Assistance Act, this fee would be raised in accordance with the FAA's authority under the Airline Deregulation Act, which allows increasing such fees in proportion to the Consumer Price Index.

Accordingly, under proposed § 47.17 certificates of registration for aircraft not used to provide air transportation would be \$25.00. Renewals and reregistration for such aircraft would be \$15.00. Certificates of registration for aircraft used to provide air transportation would be \$15.00. Renewals and reregistrations would be \$15.00. Dealer's registration certificates would be \$25.00 for the first certificate and \$2.00 for each additional certificate issued to the same dealer. No increases are being proposed for other services.

With respect to the reissuance and renewal fees of pilot certificates, in proposed § 61.30, the FAA proposes a fee of \$12.00. No fee would be charged for reissuance of an airman identity card portion of a certificate because of change of address. A fee of \$2.00 would be charged for issuing a duplicate certificate because the original has been lost, stolen, or destroyed. The fee includes replacement of both parts of the certificate if necessary. Any other

existing fees not specifically addressed in this NPRM would remain the same.

While Congress has specifically authorized collecting fees for processing Form 337 fuel tank or fuel system modifications, the FAA has not proposed fees for processing these forms because approximately only 300 such modifications are approved each year, and the administrative costs of establishing a system to collect these fees would exceed the fees received.

Enforcement

The FAA has had the authority under the FA Act to revoke an airman certificate or aircraft registration if a person has been convicted of using an aircraft to commit a Federal or State drug felony or if the FAA has determined that a person knowingly engaged in such an offense or that aircraft was used in such an offense with the owner's knowledge and permission. The law has also provided for civil and criminal penalties in connection with a drug offense for improper registration, fraudulent certificates, etc. These penalties require prosecution by a United States Attorney.

The FAA has rarely revoked an aircraft certificate as a result of drug-related offenses. The lack of enforcement is because of the FAA's lack of investigative resources and inadequate coordination of enforcement and investigation actions that involve Customs, the Drug Enforcement Administration (DEA), and the FAA.

The Drug Enforcement Assistance Act amended the FA Act to correct enforcement deficiencies by—

(1) Establishing new criminal penalties (\$15,000/3 years) for registration and certification violations not connected with transporting drugs and more severe criminal penalties (\$25,000/5 years) for such violations if connected with drug transportation;

(2) Granting DEA and Customs authority to seize any aircraft used in connection with, or in aiding or facilitating, criminal registration and certification violations; and

(3) Increasing civil penalties for violation of registration requirements from \$1,000 per violation to \$10,000 per violation (not to exceed \$50,000) and granting the FAA the authority to assess these penalties administratively, without having to refer the action to a United States Attorney for prosecution.

The proposed rule would amend § 13.16 to reflect these amendments in the FA Act for aircraft not used to provide air transportation. The FAA has not proposed that these increased penalties apply to aircraft used to

provide air transportation because it does not have that authority under the FA Act and, as previously stated, because of the language of section 7214, the FAA does not have that authority under the Drug Enforcement Assistance Act. In addition, as required by the Drug Enforcement Assistance Act, the FAA, DEA, and Customs will soon enter into a memorandum of understanding on the procedures for carrying out objectives of the new law on seizure of aircraft.

Compliance and Transition

These proposed regulations, if enacted, will require a phased schedule of compliance, since all existing pilot certificates and aircraft registration certificates would be required to be reissued. The effective date of any final rule will be contingent on the availability of resources to obtain, and the time needed to install, equipment necessary to upgrade the Airmen and Aircraft Registry to handle the proposed new requirements.

The proposed schedule of compliance is as follows:

(1) After the effective date of the final rule, all new pilot certificates would be issued in accordance with the rules and procedures proposed.

(2) After the effective date of the final rule, all existing pilot certificates would begin a schedule of reissuance. In the first year following the effective date, all pilots who possess a certificate without an expiration date and who intend to fly out of or into the United States would be reissued certificates upon their request. In the second year, all pilots who possess a certificate without an expiration date issued in an odd-numbered year would be notified of a reissuance schedule and reissued certificates accordingly. In the third year all pilots possessing a certificate without an expiration date issued in an even-numbered year would be notified of a reissuance schedule and reissued certificates accordingly. All pilots possessing certificates without an expiration date could also apply earlier than their scheduled reissuance dates.

(3) Any pilot certificate that has not been reissued and does not contain an expiration date would be ineffective on the last day of the 36th month after the effective date.

(4) After the effective date of the final rule, all new aircraft registration certificates would be issued in accordance with the proposed requirements.

(5) After the effective date of the final rule, all existing aircraft registration certificates would begin a schedule for reissuance based on the month the original certificate was issued. Aircraft

owners would be notified of their scheduled reissuance date. Aircraft owners could apply for reissuance in advance of their scheduled reissuance date.

(6) Any registration certificate that has not been reissued and does not contain an expiration date would be ineffective on the last day of the 36th month after the effective date.

Any pilot certificate and aircraft registration certificate would be invalid after the expiration date that appears on that certificate. Use of an invalid certificate could result in civil or criminal penalties in accordance with the law. Since the FAA would notify an aircraft owner or pilot when and how to apply for reissuance or renewal of certificates, it would be essential that the Airmen and Aircraft Registry have an owner's or pilot's current address. If an aircraft owner or pilot does not receive notification of reissuance, it would be the owner's or pilot's responsibility to initiate application procedures. Because there are approximately 750,000 active pilots who would need to be reissued certificates, submitting applications as soon as possible after the effective date would help to avoid delays.

Regulatory Evaluation

The FAA has performed a section-by-section analysis of the expected potential costs and expected potential benefits of the regulatory proposal regarding parts 13, 47, 61, 91, and 183. The incremental costs of implementing the proposed rule changes would affect aircraft owners and pilots. Although there are incremental processing costs to the FAA, these costs would be recovered by fee revenues. Furthermore, it should be noted that costs of this proposed rule are necessary to carry out the intent of the Congressional mandate in the Drug Enforcement Assistance Act.

Incremental costs to aircraft owners would be for reregistering aircraft, periodically registering aircraft, and paying the processing fees to the FAA. Incremental costs to pilots would be for certificate reissuances, certificate renewals, and paying increased processing fees to the FAA. Together, these costs are estimated to total \$9.6 million in the first year, and the present value of costs would total \$78.5 million over 20 years. These costs include direct costs to aircraft owners and pilots, including new or increased fees imposed by this regulatory proposal, but do not include increased FAA costs, because all FAA costs incurred as a result of this proposal would be recovered through user fees. Detailed data upon which

these figures are based are incorporated in the full regulatory evaluation contained in the Docket.

The section-by-section analyses of costs detail the increment in fees that aircraft owners and pilots would pay to the FAA as well as the incremental regulatory costs of the proposed rules to the FAA. The FAA's fee revenues would cover not only labor costs associated with issuing certificates and processing forms, in conformity with this regulatory proposal, but also associated capital investment costs. The FAA's fee revenues, consequently, would be greater than its processing costs presented in the section-by-section analyses. Therefore, wherever the FAA's costs are presented in the section-by-section analyses, those costs are attributed as fees borne by aircraft owners or pilots, not by the FAA.

Cost Analysis of Part 13—Investigative and Enforcement Procedures

The proposed changes to part 13 would impose no incremental costs. While some additional resource needs might be identified with the proposed language for § 13.16, the Federal Aviation Administration (FAA) already has initiated action for adding additional litigative, investigative, and support staff to assist the new Drug Interdiction Support Units (DISUs) of the FAA. These additional personnel are expected to be sufficient to meet any resource requirements that would be a consequence of proposed changes to part 13.

Sections 13.16(a) (1) and (5) would impose no costs. They provide for a civil penalty for violation of the law that is the violator's burden, and not a compliance cost to any segment of society.

Section 13.16(b) merely proposes to include those title V violations under the FA Act, as amended, under the civil penalty procedural rules, that provide that persons subject to civil penalties are provided notice and the opportunity of an administrative hearing prior to being assessed a penalty. The proposal does not change the cost assessment made under the prior rulemaking amending part 13, generally (53 FR 34846; September 7, 1988). The FAA cannot anticipate the number of persons who may request a hearing after an order of civil penalty has been issued by the FAA. For this reason, the FAA anticipates that the cost, if any, of complying with this proposed procedural rule change would be minimal.

Section 13.17(a) would impose no costs because it simply limits the scope of the proposed rule to exclude aircraft

seizures of the Drug Enforcement Administration or U.S. Customs Service made under Section 902(b)(3) of the FA Act.

Cost Analysis of Part 47—Aircraft Registration

The proposed changes to part 47 would revise the procedures for registering an aircraft. Aircraft registrants would incur costs in filing the revised applications and submitting associated fees. The FAA would spend more time processing applications for certificates of registration. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory costs. The incremental costs to aircraft registrants are estimated to be \$4.8 million in the first year. Based on forecasts of the rate of growth in change-of-address transactions, the present value cost to aircraft registrants as a result of these proposed changes to part 47 would be \$41.0 million over 20 years. A summary breakdown of these costs is given below, and more detailed cost data are incorporated in the full regulatory evaluation contained in the Docket.

Section 47.13(a) would impose no costs, because it only adds the requirement that the name on the application be typed or legibly printed. The application currently must be signed in ink.

Section 47.15(d) would impose no costs because an aircraft registrant already can request a special number and pay a fee for this privilege. The fee is not scheduled to rise if this proposal is implemented. However, there may be a reduction in the number of special requests, because this proposal provides that special registration numbers may be assigned to an aircraft only in conjunction with a change in aircraft ownership. The costs of the Aircraft Registration Application, evidence of ownership, and registration fee are addressed in § 47.31. The requirement that the written request to change numbers when the seller wants to reserve the registration number must be signed by both the seller and the applicant would impose no cost.

Section 47.15(f) would impose no costs, since the aircraft owner already must submit AC Form 8050-64 within 5 days of affixing the registration number on the aircraft. Limiting the duration of the temporary authority to 45 days would not affect owners, since the FAA Registry would process applications within 30 to 45 days.

Section 47.15(i) would impose no costs, because it simply defines the conditions under which a current aircraft registration number would expire. Costs for reregistration are addressed in the cost analyses of §§ 47.19, 47.31, and 47.32. Costs of renewal are addressed in the cost analyses of §§ 47.31 and 47.46.

Sections 47.17 (a) and (b) would impose no costs, because they merely list the fees and clarify method of payment.

Sections 47.19 (a) and (b) would impose no costs, since they continue present practice.

The maximum incremental annual cost of § 47.19(c) would be to applicants who request a temporary certificate in conformity with the requirements of § 47.32. In these cases, the incremental cost would be the lesser cost of either of two options for submitting an application: personal appearance or overnight mail.

The cost of a personal appearance at an FAA office would depend on the geographical distance between the FAA office and the applicant. While most people are in close proximity to an FAA office, a few people may have to travel as far as 500 miles. The expenses to appear in person would then be the applicant's travel expense plus the value of the applicant's time. If the applicant had to travel 500 miles round trip, travel expenses alone would be \$105 based on the current federal mileage charge of \$0.21 per mile. However, if a trip to an FAA office is inconvenient, the registration process could be completed using the second option, overnight mail. Under this option, the applicant would send the application and a return overnight mail envelope to the FAA Registry (via overnight mail). The Registry would issue a temporary certificate and mail it to the applicant in the return envelope.

Applicants might find it more convenient and/or less costly to submit the application in person than via overnight mail. In this case, the two-way cost of overnight mail (\$17.00) would be the cost to comply with the requirements of this section. Therefore, the FAA assumes that this cost would be the cost of submitting each application. The annual incremental cost of this section would be the \$17 cost of two-way mail multiplied by the estimated 80,000 annual applications for certificates of aircraft registration (which also request temporary authority to operate prior to receiving the Certificate of Aircraft Registration), which equals \$1.4 million per year, or a present value of \$11.6 million over 20 years.

The incremental cost of § 47.31(a) would be the increase in the application fee from \$5 per application to \$25. The \$20 increase, multiplied by 80,000 new applications per year for aircraft registration, equals \$1.6 million, the annual incremental cost of the section, or a present value of \$13.6 million over 20 years.

The requirement for identification numbers would impose no cost. The original Aircraft Bill of Sale, AC Form 8050-2, or other evidence of ownership is currently required. The cost for a copy or copies of the proof of identification required by paragraph (b) of this section is addressed in the cost analysis of paragraph (b) of this section.

Section 47.31(b) would impose incremental costs on applicants to appear before either a notary public, other person authorized to administer oaths, or an FAA office; to provide evidence that the aircraft registrant is a viable legal entity if the applicant represents an association, partnership, or corporation; and to provide a good quality reproduction of both the photo identification of the applicant and evidence that the registrant is a viable legal entity.

Cost estimates are based on the assumption that all applications for registration would be submitted via overnight mail. Therefore, applicants would be required to appear before a notary public. Notaries public charge between \$2 to \$5 for each seal, or an average of \$3.50. \$3.50 multiplied by the total applications filed annually, 150,000 (80,000 applications for new registrations and estimated 70,000 applications for renewals filed annually), equals \$525,000.

Of the 80,000 applications filed for new registrations annually, approximately 24,500 are for business-owned aircraft. The average cost of the documents from the business entity's jurisdiction certifying that the aircraft registrant is a viable legal entity would be \$6. Therefore the cost would be 24,500 applications multiplied by \$6, which equals \$147,000 annually.

The cost for a good quality reproduction of the photo identification of the applicant would be \$0.10 per copy multiplied by the number of annual registrations and renewals, 150,000, which equals \$15,000 annually.

The cost for a good quality reproduction of evidence that the registrant is a viable legal entity would be the annual number of applications filed by associations, partnerships, or corporations (24,500), multiplied by the cost of the good quality reproductions of the evidence, \$0.20 (two pages at \$0.10 per page), which equals \$4,900 annually.

The sum of the costs for this section is \$691,900 annually, which equals a present value of \$5.9 million over 20 years.

Section 47.32(a) would impose no costs, since aircraft presently may not be operated without a certificate of registration on board. The cost to apply for a temporary authority form is addressed in the cost analysis of § 47.19.

Requests for temporary authority forms, as set forth in proposed § 47.32(b), would impose an incremental cost on the FAA for processing applications and for production of new temporary authority forms on nonforgeable paper.

The cost to the FAA to process the temporary authority applications would be the annual number of applications, 80,000, multiplied by 0.33 hours, the estimated processing time per application, multiplied by \$11.95, the average hourly cost (salary plus fringe benefits) for a GS level 6 processor, which equals \$318,667 annually.

The annual incremental cost of nonforgeable paper would be the additional cost for paper, \$0.10 per sheet, multiplied by the 80,000 applications, which equals \$8,000 annually.

Mailing costs are addressed in § 47.19. Therefore, the incremental cost of this section to the FAA would be the cost to process temporary authority applications (\$318,667) plus the cost of nonforgeable paper (\$8,000), which equals \$326,667 annually. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

Section 47.32(c) would impose no costs. The proposal would reduce from 90 days to 45 days the requirement for registrants to apply for a letter of extension if the FAA has not acted upon the aircraft registration application. However, the FAA would expect to act on such applications within 45 days.

Section 47.32(d) would deny the applicant authority to operate the aircraft outside the United States before the registration certificate has been received unless the applicant has a temporary certificate of registration for use outside the United States. The cost of obtaining such a certificate is addressed in the cost analysis of § 47.32(b).

Section 47.39 would impose no costs by showing the effective date of registration as the date of issuance on the Certificate of Aircraft Registration when the requirements of part 47 have

been met. The cost of applying for the certificate of registration is addressed in §§ 47.19, 47.31, and 47.32.

Section 47.41(a) would impose no costs, since it merely brings together in one section the conditions by which a certificate of aircraft registration issued by the FAA may remain effective. The incremental costs of certificate expiration to aircraft registrants are addressed in § 47.46.

Section 47.41(b) would entail only negligible costs, because under present requirements the certificate of registration must be returned. This section would only add the stipulation that the certificate be returned within 10 days of termination in all cases mentioned in paragraph (a) of this section or, if the certificate is not available, that an affidavit be submitted to the Registry. The time limitation would not impose any incremental cost of compliance. Further, because certificates must be kept on board the aircraft, certificates are rarely unavailable.

The incremental costs of § 47.45 would be the cost to aircraft registrants for compliance with the requirements of § 47.31(b) plus processing costs and the cost of nonforgeable paper to the FAA. Since registrants presently must notify the FAA of a change of address and since there is no fee charged for processing a change of address, there would be no other compliance costs.

The incremental cost for the registrant would be approximately \$4 (\$3.50 for the notary public, \$0.10 for a copy of the picture, and \$0.40 for postage) multiplied by 16,522, the estimated first year's change of address transactions, which equals \$66,088 in the first year. The number of aircraft registration change of address transactions is forecast to increase annually by approximately 1,000 transactions for the next three years and then slow to an annual increase of 500 transactions. These forecast transactions are taken into account in calculating the present value of costs over 20 years, \$714,277.

The incremental cost for the FAA Registry to process a change of address would be the cost of 5 minutes of preliminary processing time for a GS level 6 processor (at an average cost for salary and fringe benefits of \$11.95 per hour), and 15 minutes of review for a GS level 9 processor (at an average cost for salary and fringe benefits of \$16.24 per hour), for a processing cost per transaction of \$5.06. The incremental cost to process changes of address would be the processing cost, \$5.06, multiplied by the number of change of address transactions in the first year, as

noted above, 16,522, which equals \$83,532 in the first year.

The FAA would issue a revised Certificate of Aircraft Registration on nonforgeable paper. The cost of nonforgeable paper would be \$0.10 per sheet multiplied by 16,522 transactions in the first year, as noted above, which equals \$1,652. Therefore, the incremental cost of this section to the FAA in the first year would be the processing cost (\$83,532) plus the cost of nonforgeable paper (\$1,652), which equals \$85,184 in the first year. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The sum of the costs to registrants for this section in the first year is \$66,088. Based on the forecast increase in change of address transactions, the present value would be \$714,277 over 20 years. Further details are incorporated in the full regulatory analysis contained in the Docket.

Section 47.46(a) would impose no costs, since it would merely define the expiration date of a Certificate of Aircraft Registration. The costs of applying for renewal are addressed in the cost analysis of paragraph (c) of this section.

Section 47.46(b) would impose no costs, because it merely defines the schedule for reregistration. All costs of reregistration are addressed in §§ 47.19, 47.31, and 47.32.

Section 47.46(c) would impose incremental costs on holders of Certificates of Aircraft Registration for applying for renewal and on the FAA for processing renewal applications.

Applicants would be informed of the forthcoming expiration of their certificates by the FAA in sufficient time to apply for renewal. Therefore, applicants who comply with the requirements of § 47.31 would be able to submit applications by mail. The cost of appearing before a notary public and the cost of a good quality reproduction of either the photo ID or the document showing that the applicant is a viable legal entity are addressed in the cost analysis of § 47.31(b).

Therefore, the incremental cost for applicants to apply for renewal would be the renewal fee, \$15, plus the cost of mailing the application, \$0.40, multiplied by the number of annual renewals (Approximately 70,000 aircraft of the total 298,112 aircraft are estimated to renew their certificates yearly), which equals \$1.1 million annually.

The incremental cost to the FAA would be the renewal application

processing cost plus the cost of nonforgeable paper. Application processing would require about 5 minutes of preliminary processing time by a GS level 6 processor (at an average cost for salary and fringe benefits of \$11.95 per hour), and 15 minutes of review by a GS level 9 processor (at an average cost for salary and fringe benefits of \$16.24 per hour), which equals a processing cost of \$5.06 per transaction. Therefore, the annual incremental cost for the FAA would be processing costs, \$5.06, plus the incremental cost of nonforgeable paper, \$0.10, multiplied by the annual number of applications for renewal, 70,000, which equals \$361,200. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The sum of the costs of this section is the \$1.1 million annual cost to applicants, which equals a present value of \$9.2 million over 20 years.

Section 47.49(a) would entail only negligible costs, because there have been few reported lost, stolen or mutilated registrations due to the requirement that the registration certificates must remain on board aircraft.

Section 47.49(b) would impose no costs, because it would not change present practice.

Section 47.49(c) would impose no costs, since it merely would allow the FAA Aircraft Registration Application to be used to request a replacement certificate.

The removal of § 47.51 would impose no costs. The section requires the FAA Registry to verify aircraft registrations every 36 months. This section would be unnecessary with the proposed new registration and renewal requirements.

Sections 47.63 (a) and (b) would impose no costs, because they merely define the procedure for obtaining a Dealer's Aircraft Registration Certificate, AC Form 8050-8. The incremental costs of these sections are addressed in the cost analyses of §§ 47.19, 47.31, and 47.32.

Cost Analysis of Part 61—Certification: Pilots and Flight Instructors

Proposed changes to part 61 would revise the procedures by which pilots would obtain their airman certificates and the FAA would process applications for a pilot's certificate. Pilots would incur incremental costs in filing the new application and in fees. The FAA would spend more time processing applications for pilot's certificates. However, since

the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The incremental cost to pilots in the first year as a result of these proposed changes to part 61 would be \$3.9 million. Based on FAA forecasts of the number of active pilots (excluding student pilots), the present value cost to pilots would be \$35.3 million over 20 years. A summary breakdown of these costs is given below, and more detailed data are incorporated in the full regulatory evaluation contained in the Docket.

Section 61.3(a) would impose no costs, because the requirement that the pilot must have in his personal possession both parts of the proposed certificate is no different from the current rule except to specify that the new certificate has two parts. The cost of the two-part certificate is addressed in the cost analyses of §§ 61.18 and 61.19.

Section 61.5(b) would impose no costs, since it would merely replace the words "pilot certificates" with "the rating card portion of each pilot certificate".

Section 61.11(c) would impose no costs, because it merely would delete an obsolete sentence.

Section 61.17(a) would impose no costs, because the FAA would provide a pilot's certificate within about 43 days, much earlier than the proposed allowable 60 days. Costs for the new temporary certificates are addressed in the cost analysis of proposed § 61.19(c).

Sections 61.18 (a), (b) and (c) would impose no costs. They merely set forth the timetable for pilots to follow in applying for reissuances in order to maintain operating privileges, including the privilege to fly into or out of the United States.

Section 61.18(d) would impose incremental costs on pilots for exchanging a pilot's certificate that does not have an expiration date for a renewable pilot's certificate. The FAA would incur costs for processing the reissuances.

A pilot would have three means to forward an application for certificate reissuance. The pilot could submit the application through an aviation medical examiner (AME), through a pilot examiner, or in person at an FAA District Office. Since active pilots must have a medical examination every 6 months, 1 year, or 2 years, depending on the class of medical certificate, a pilot could plan to apply for reissuance at the pilot's next medical examination, thereby minimizing the burden to pilots of applying for reissuance. This minimal

burden is assumed in calculating the incremental cost to pilots for applying for reissuance.

The incremental cost per application for reissuance would be the application fee, \$12, plus the cost of the passport-quality photograph, \$9, which equals \$21. Costs for AME's services are attributable to § 183.21 and are addressed in the cost analysis of that section. There are presently approximately 553,637 active pilots (excluding student pilots). Since only one-third of all pilots would be applying each year for reissuances during the transition period, the incremental cost for pilots in the first year would be one-third of 553,637 pilots multiplied by the incremental cost, \$21, which equals \$3.9 million.

Prior to passage of the Anti-Drug Abuse Act of 1988, the FAA initiated action to modernize the FAA Registry, including modification and handling of applications and certificates. Therefore, the regulatory cost of this section to the FAA would be for processing applications.

The number of active pilots who would apply for reissuance in the first year of the three-year transition is one-third of the 553,637 active pilots, which equals 184,546 pilots. Therefore, the estimated processing cost to the FAA for reissuances for the first year would be 184,546 multiplied by 0.25 hours, the processing time per application, multiplied by \$16.24, the average hourly and fringe benefits of a GS level 9 processor, which equals \$749,257 in the first year. Costs would increase with each subsequent year of the three-year transition period in proportion to increases in the active pilot population. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The cost to pilots for this section would be \$3.9 million annually, or a present value of \$9.7 million for the three-year transition period.

Section 61.19(c) would impose an incremental cost on pilots for filing renewal applications. The FAA would incur costs for processing renewal applications and for the nonforgeable paper.

Pilots would file renewal applications starting in the fourth year after the effective date of the rule. Based on the 184,546 active pilots who would seek reissuance in the first year of the three-year transition, increased by one percent annually, approximately 190,138 pilots would be filing applications for

renewal in the fourth year. (A detailed documentation for this estimate is incorporated in the full regulatory evaluation contained in the Docket.) Therefore, the incremental cost for pilots to file a renewal application in the fourth year after the effective date of the rule would be the renewal fee, \$12, plus the cost of the photograph, \$9, multiplied by 190,138 pilots, which equals \$4.0 million in the fourth year after the effective date of the rule. This yearly cost would increase proportionately with pilot population growth (one percent annually) for each subsequent year.

The FAA's processing cost would be the incremental processing time, 0.25 hours, multiplied by the average hourly salary and fringe benefits of a GS level 9 processor, \$16.24, multiplied by 190,138 renewal applications, which equals \$771,960 in the fourth year after the effective date of the rule.

The incremental cost of nonforgeable paper would be \$0.10 per page multiplied by 190,138 pilots submitting applications, which equals \$19,014 in the fourth year after the effective date of the rule.

Thus, the FAA's cost in the fourth year after the effective date of the rule would be the processing cost (\$771,960) plus the cost for nonforgeable paper (\$19,014), which equals \$790,974. Costs would increase with each subsequent year in proportion to increases in the active pilot population. However, since the FAA would receive fee revenues in an amount sufficient to offset the sum of costs to the FAA to implement this regulatory proposal regarding parts 13, 47, 61, 91, and 183, the FAA would bear no incremental regulatory cost.

The cost for this section to applicants for renewal would be \$4.0 million in the fourth year after the effective date of the rule, or, based on the forecast rate of growth of pilots, a present value of \$25.5 million for costs incurred during the 17 years following the three-year transition period. (Note that present value costs for the three-year transition period are addressed in the analysis of costs of § 61.18(d).)

Section 61.20 would impose no costs, because it simply clarifies the pilot's responsibility for renewal of the airman identity portion of the pilot's certificate. The costs of renewal are addressed in § 61.19(c).

Section 61.29 would impose no costs, since adding the applicant's signature and mother's first name and substituting the words "the required fee" for the words "\$2" would cost nothing. The fees schedule would be shown in proposed § 61.30.

New §§ 61.30(a) and (b) would impose no costs, since they merely list the fees and clarify method of payment.

Section 61.60 would impose no costs for providing the additional required information on notification of change of address.

Section 61.75(b)(4) would impose no costs, since it merely clarifies a condition of a pilot certificate issued on the basis of a foreign pilot license.

Section 61.75(j) would impose no costs, because it would merely correct the language pertaining to pilot certificates issued on the basis of a foreign pilot license to correspond to the proposed rules for pilot certificate reissuance and renewal set forth in proposed §§ 61.18 and 61.19. The incremental costs of all pilots certificates are addressed as part of the incremental costs attributed to §§ 61.18 and 61.19.

Section 61.77(e)(4) would impose no costs, because it merely would correct the language to correspond to the duration proposed for all other pilot certificates (except student pilot certificates) in § 61.19(c). Special purpose certificates are addressed as part of the incremental cost of §§ 61.18 and 61.19.

Cost Analysis of Part 91—General Operating and Flight Rules

The proposed change to part 91 is a non-substantive change that conforms § 91.203(a)(2) to the proposed amendments to part 47. The FAA will be issuing a document allowing temporary authority to operate an aircraft in lieu of the second duplicate copy (pink) of the aircraft registration application referred to in current § 47.31(b). No additional costs are incurred by the FAA on registrants beyond those discussed in the cost analysis of part 47.

Cost Analysis of Part 183—Representatives of the Administrator

The proposed change to § 183.21(f) would expand aviation medical examiner authority to include accepting applications for and verifying the identity of applicants for reissuance of pilot certificates under § 61.18. The incremental costs of this proposed change, approximately \$922,728 in the first year, would be borne by either AMEs or pilots, depending on whether or not the AME passes the cost on to the pilot as a fee increase. The present value of this cost, based on a forecast rate of growth of one percent annually in the pilot population, would be \$2.3 million over the 3-year transition period.

Based on the premise and calculations explained in the cost analysis of

§ 61.18(d), when AMEs accept applications for and verify identity of applicants for reissuance of pilot certificates, they could charge a fee for this additional service. The incremental fee very likely would be no more than 5 percent of the average pilot examination cost. Since examinations typically cost between \$50 and \$150, a 5 percent increase would be between \$2.50 and \$7.50 per exam, or an average of \$5 per exam.

The incremental cost of this section in the first year could be the average incremental fee charged by an AME, \$5, multiplied by one-third of 553,637 pilots, the number of pilots seeking reissuance in the first year, which equals \$922,728. The present value of this cost, based on a forecast rate of growth of one percent annually in the pilot population, would be \$2.3 million over the 3-year transition period.

Benefits

The primary benefit of this proposal is expected to be the effect it would have in reducing the amount of illegal drugs smuggled into the United States by general aviation aircraft. Additional expected benefits would include increased efficiency in law enforcement procedures, improved safety in the law enforcement environment, and better treatment for legitimate aircraft owners and pilots. Congress has determined that, at the present time, smuggling of drugs into the United States by such aircraft is a major contributing factor in the illegal drug crisis facing the nation. As a result of that determination, the mission of the Federal Aviation Administration has been expanded to include the provision of assistance to law enforcement agencies in the enforcement of laws relating to the regulation of controlled substances, to the extent consistent with aviation safety.

Actions Linked to Proposed Rules

Since procedures are covered primarily in guidance materials rather than in regulations, some of the FAA's actions to correct procedural deficiencies in airman certification and aircraft registration do not require rule changes. Two key Action Notices in this regard address pilot certification procedures and handling of fuel tank system modification documents in the aircraft registration process. Quantification of the benefits of these non-rulemaking actions is not feasible, nor would attempts at imprecise estimates be practical.

Issuance of the action notice (discussed above in the Pilot Certification section of the Preamble)

changing the procedures relating to the airman certification process will assist law enforcement agencies by requiring applicants to present positive identification, including photograph, signature, and actual residential address. Although statistical data on the subject are not maintained, it is widely recognized that a significant number of drug trafficking pilots use fictitious identification and licenses in furtherance of their illegal activities. The proposed changes in certification regulations, which call for an airman identity card will, when linked together with the Action Notice, significantly reduce the number of false and fraudulent licenses in use today, and will severely hinder the ability of criminals to rent, lease, or operate aircraft under assumed or fictitious names.

Issuance of the Action Notice requiring expedited handling of fuel tank system modification documents (Form 337) will assist law enforcement officers, and particularly Customs Officers in making sound enforcement decisions based on more accurate information.

Drug traffickers often modify an aircraft's fuel system to extend its range, and FAA personnel must be able to determine quickly and accurately whether or not such a modification was approved. The Customs Service is responsible for enforcing the provisions of the Customs Enforcement Act of 1986. Title 19 of the U.S. Code, Section 1590, entitled "Aviation Smuggling," specifies that an unapproved modification to the aircraft's fuel system is prima facie evidence that the aircraft was used in connection with, or to aid or facilitate a violation of that law. During 1988, the Customs Service's aviation smuggling groups seized a total of 72 aircraft. Although the Customs Service's seizure tracking system does not identify the exact number of seizures made for this type of violation, certainly a large percentage, 30 percent to 40 percent, contained modifications to their fuel systems. Additionally, the provision of more current and accurate records by the FAA will effectively save the costs of enforcement actions taken that are based on erroneous information.

Current Airmen Identity Card With Picture

As with aircraft registration, the periodic updating of the Airman Identity Card would assist law enforcement by providing more current information as to addresses and physical appearance of suspect pilots. The ability of law enforcement to immediately verify the identity of a pilot through the use of picture identification is invaluable.

Officer safety is increased when the officer is able to confirm visually the identity of the person confronted. Further, visual confirmation may negate the need to run more extensive records checks.

Enforcement Actions

The proposed changes to part 13 would implement the provisions of the Drug Enforcement Assistance Act of 1988 that strengthen the authority of the FAA, law enforcement agencies, and particularly the Drug Enforcement Agency and the U.S. Customs Service, to initiate enforcement actions based on registration and certification violations. Specifically, the law established:

- New criminal penalties for registration and certification violations not connected with transporting drugs,
- More severe criminal penalties for registration and certification violations if connected with drug transportation, and
- Authority for both the Drug Enforcement Administration and the Customs Service to seize any aircraft used in connection with, or in aiding or facilitating, criminal registration and certification violations.

Positive Identification

The proposed regulations requiring owners to personally appear before authorized persons, and to produce proof of identity including photo identification, would be a significant help in the prevention of fraudulent and fictitious registration of aircraft. The proposed new registration requirements would allow the FAA to build and maintain an up-to-date database of presumably true registered owners, which Customs officers, the most frequent users, query thousands of times every week.

Aircraft Registration and Pilot Certificate Information

As evidence of the disregard that has been shown within some parts of the aviation community for the current regulations pertaining to notification of sale and reregistration, the Customs Service, during the period October 18, 1988, through April 7, 1989, conducted a nationwide operation that documented 293 instances of aircraft flying internationally in violation of § 91.27(a)(2) of the Federal Aviation Regulations. Eighteen of those aircraft were suspected of being involved in drug smuggling activities, and 57 of the pilots encountered were found not to be of record in the files of the FAA.

Currently, the Customs Service has pilots, interdiction officers, agents and investigators assigned to collocated aviation smuggling groups nationwide. Their enforcement responsibilities

require that they routinely perform inquiries as to the identity of suspect pilots and aircraft. These personnel are not the only ones who need and rely on the data maintained in the FAA files. All Customs Service enforcement and inspection personnel, as well as such personnel in other Federal, state, and local law enforcement agencies have cause to query those aircraft and airman records. Within the Customs Service alone, between 30,000 and 40,000 queries are made on aircraft through the Treasury Enforcement Communications System (TECS) each month by Customs and kindred personnel. A similar number of pilot licenses also are queried.

With the proposed regulatory changes in the aircraft registration process in place, criminals would be forced to use stolen aircraft in smuggling and transportation operations. As stolen aircraft are entered into the National Crime Information Center (NCIC) and TECS relatively quickly, law enforcement's ability to detect them and their illicit cargo would be greatly enhanced.

Machine Readable Registration and Certification Documents

The proposed changes to the regulations that would require documents to be issued on nonforgeable paper and be machine readable would allow the Customs Service to record more quickly and easily the entries of aircraft and pilots as they enter the United States, and would insure the accuracy of data entered into the system. Special agents and criminal investigators regularly use these records as investigative tools in all types of investigations. The timely availability and accuracy of these records is essential to agents whether they are using these records as investigative leads, or presenting them as documentation in court proceedings.

In the course of exercising their duties to inspect aircraft, pilots, and passengers entering the United States, Customs inspectors currently query an average of approximately 11,000 arriving aircraft each month. During inspections, the Customs inspector is required to query the pilot's name and aircraft registration through the TECS database. The proposed regulatory changes would benefit the travelling public by allowing the Customs inspector to conclude the examination more quickly, and would benefit law enforcement officers and drug interdiction efforts by providing the inspector with all the available information about the person and aircraft the inspector is confronting.

The ability of criminals to hide behind fictitious business entities and false personal identification has been a major detriment to effective law enforcement and drug interdiction efforts. The proposed regulations would help correct that problem.

The benefits of these types of regulatory changes cannot always be expressed quantitatively. Officer safety, denial of smuggling methods, and enhanced effectiveness and efficiency in detection and processing are all direct benefits that are not readily quantifiable. These benefits would accrue not only to the Customs Service, but also to other Federal, state, and local law enforcement agencies, and to the innocent travelling public.

Comparison of Benefits and Costs

The FAA cannot ascertain with certainty the number of arrests or aircraft and drug seizures that will be made as a result of the proposed regulatory changes. However, the FAA believes that the costs of the proposed changes would be far outweighed by the benefits in efficiencies in law enforcement procedures and drug interdiction, benefits to legitimate pilots and aircraft owners in treatment and saved time, and benefits to society in the war on drugs.

The Congress has stated in the Drug-Free America Policy of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, sec. 5251, 102 Stat. 4148, 4309 (1988)), that the total cost of drug use to the economy is estimated to be over \$100 billion annually. Were this regulatory proposal to achieve the removal from society of 1/10,000th of the economic cost of drug use, that achievement would more than equal the estimated annual cost to society of this regulatory proposal. The FAA believes that such an achievement is a practical and reachable objective.

Regulatory Flexibility Determination

For the reasons noted above, it is certified that the proposed regulations will have no significant economic impact, positive or negative, on a substantial number of small entities. Accordingly, the FAA finds that a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Trade Impact Statement

The FAA finds that the negligible costs that would be imposed by the proposed regulations will not have an impact on international trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects

on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparations of a Federalism Assessment.

Conclusion

For the reasons set forth under the heading "Regulatory Evaluation," the FAA has determined that this document involves a proposed regulation that (1) is not a major rule under Executive Order 12291; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," I certify that the proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Air transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Reporting and recordkeeping requirements.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Health professions, Reporting and recordkeeping requirements.

The Proposed Amendment

The Federal Aviation Administration proposes to amend parts 13, 47, 61, 91, and 183 of the Federal Aviation Regulations (14 CFR parts 13, 47, 61, 91, and 183) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 is revised to read as follows:

Authority: 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401-1406, 1421-1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484-1489 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1475, Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act) (Revised, 49 U.S.C. App. 106(g)); 49 U.S.C. App. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. App. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. App. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety and Capacity Expansion Act of 1987); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); sec. 7201, et seq., Pub. L. 100-690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 CFR 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.16 is amended by revising paragraph (a)(1), adding a new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 13.16 Civil penalties: Federal Aviation Act of 1958, involving an amount in controversy not exceeding \$50,000; Hazardous Materials Transportation Act.

(a) * * *

(1) Any person who violates any provision of title III, VI, or XII of the Federal Aviation Act of 1958, as amended, and any person who violates any provision of title V of that Act involving an aircraft that is used to provide air transportation, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than \$1,000 for each violation, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, et seq.).

(b) * * *

(5) Any person who violates any provision of title V of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, when the violation involves an aircraft not used to provide air transportation, is subject to a civil penalty of not more than \$10,000 for each violation, not to exceed \$50,000, in accordance with section 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1471, et seq.).

(b) An order assessing civil penalty may be issued for a violation described in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this section after notice and opportunity for a hearing.

* * *

3. Section 13.17 is amended by adding a new sentence at the end of paragraph (a) as follows:

§ 13.17 Seizure of an aircraft.

(a) * * * This section does not apply to the seizure of aircraft under section 902(b)(3) of the Federal Aviation Act by the Drug Enforcement Administration of the Department of Justice or by the United States Customs Service.

* * *

PART 47—AIRCRAFT REGISTRATION

4. The authority citation for part 47 is revised to read as follows:

Authority: Secs. 307, 313, 501, 503, 505, 506, and 1102, 72 Stat. 749, 752, 771, 772, 774, 797; 49 U.S.C. App. 1348, 1354, 1401, 1403, 1405, 1406, and 1502; sec. 7201, et seq., Pub. L. 100-690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); and the Convention of the International Recognition of Rights in Aircraft; 4 U.S.T. 1830.

5. Section 47.13(a) is revised to read as follows:

§ 47.13 Signatures and instruments made by representatives.

(a) Each signature on an Application for Aircraft Registration or on a document submitted as supporting evidence under this part must be in ink. The name of each signer on the Aircraft Registration Application must also be typed or legibly printed on the application.

* * *

6. Section 47.15 is amended by revising the section heading; changing the word "identification" to "registration" wherever it appears in paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) introductory text, and (a) concluding text; revising paragraphs (d) and (f); and adding a new paragraph (i), to read as follows:

§ 47.15 Registration number.

* * *

(d) Any unassigned registration number may be assigned to an aircraft as a special registration number. The following conditions apply to the assignment of special registration numbers:

(1) Except for governmental units, a special registration number may be assigned to an aircraft only once during an ownership of the aircraft.

(2) An applicant's request for a special registration number or to change a registration number on an aircraft to a special registration number must be in writing and must be accompanied by the special registration number fee.

(3) When a seller wants to reserve the registration number currently assigned

to the aircraft, a written request to reserve the number by the seller must be signed by both the seller and the applicant for aircraft registration. The request must be accompanied by the fee set forth in § 47.17.

* * *

(f) The Aircraft Registry assigns a special registration number on AC Form 8050-64. Within 5 days after the owner affixes the special registration number to his aircraft, he must complete and sign the receipt contained in AC Form 8050-64, state the date he affixed the number to his aircraft and return the original form to the Aircraft Registry. The owner shall carry the duplicate of AC Form 8050-64 in the aircraft as authority to use that registration number. This authority is valid for 90 days after the date of issuance of AC Form 8050-64 or until the date the owner receives a Certificate of Aircraft Registration showing the new registration number issued by the Aircraft Registry, whichever is earlier.

* * *

(i) The assignment of a registration number to an aircraft ceases to be effective:

(1) On [3 years after effective date of final rule] for any aircraft that has not been reregistered in accordance with § 47.46(b);

(2) On the expiration date shown on the Certificate of Aircraft Registration for any aircraft whose registration has not been renewed in accordance with § 47.46(c); or

(3) Three years after the sale of an aircraft has been reported to the Aircraft Registry, if the aircraft has not been registered to a new owner.

7. Section 47.17 is revised to read as follows:

§ 47.17 Fees.

(a) The fees for applications under this part are as follows:

(1) Certificate of Aircraft Registration for aircraft used to provide air transportation:

(i) Registration after transfer of ownership—\$15.00

(ii) Renewal or reregistration—\$15.00

(2) Certificate of Aircraft Registration for aircraft not used to provide air transportation:

(i) Registration after transfer of ownership—\$25.00

(ii) Renewal or reregistration—\$15.00

(3) Dealer's Aircraft Registration Certificate:

(i) Registration Certificate—\$25.00

(ii) Additional Dealer's Certificate (issued to same dealer)—\$2.00

(4) Special registration number (each number)—\$10.00

(5) Changed, reassigned, or reserved registration number—\$10.00

(6) Replacement Certificate if lost, stolen, or mutilated—\$2.00

(7) Replacement Certificate if change of address—No Cost

(b) Each application must be accompanied by the proper fee, that may be paid by check or money order to the Federal Aviation Administration. Payments submitted in person at the Aircraft Registry may be made by Visa or Mastercard.

8. Section 47.19 is revised to read as follows:

§ 47.19 Mailing or delivery of applications or other correspondence.

Each application, request, notification, or other communication sent to the FAA under this part must be:

(a) Mailed to the FAA Aircraft Registry, Post Office Box 25504, Oklahoma City, Oklahoma 73125;

(b) Delivered to the Registry at Room 301G, Aviation Records Building, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma 73169; or

(c) Delivered to an FAA Office under the provisions of § 47.32.

9. Section 47.31 is revised to read as follows:

§ 47.31 Application for Certificate of Aircraft Registration.

(a) *Submission.* An applicant for a Certificate of Aircraft Registration must submit the following:

(1) The original (white), the first copy (green), and the Certification as to True Copy/Identification of the Aircraft Registration Application. AC Form 8050-1. The blue copy of the Aircraft Registration Application is retained by the applicant.

(i) Except for governmental units, each applicant must show on the Aircraft Registration Application his driver's license number if an individual, or the Taxpayer Identification Number (TIN) if other than an individual.

(ii) Each applicant who uses a post office box, post office drawer, or mail drop as the mailing address must, in addition, show on the Aircraft Registration Application, a street address for the applicant's place of residence or business.

(2) The original Aircraft Bill of Sale, AC Form 8050-2, or other evidence of ownership authorized by §§ 47.33, 47.35, or 47.37 (unless already recorded by the Aircraft Registry).

(3) A copy or copies of the proof of identification required by paragraph (b) of this section.

(4) The fee specified in § 47.17.

(b) *Identification procedure.* The applicant or the person who has signed

the application form for the applicant must appear before a notary public, other person authorized by law to administer oaths, or at an FAA office listed in § 47.32(b)(2) with the Certification as to True Copy/Identification portion of AC Form 8050-1 and must comply with the following requirements, as applicable:

(1) The applicant must present a photo ID containing a picture of the applicant or the person who has signed the application form for the applicant. A state driver's license containing a photograph of the signer is the preferred photo ID. If a state driver's license is not available, a pilot identification card portion of a pilot certificate or a U.S. passport is acceptable. The applicant must also present a copy of the photo ID presented under this subparagraph. The copy shall be a good quality reproduction on which all printing is legible.

(2) If the applicant is a corporation, association, or partnership, in addition to complying with paragraph (b)(1) of this section, the applicant must present either an original Certificate of Incorporation, a copy of such a certificate certified by the issuing authority, or other document showing that the applicant is a viable legal entity. The applicant must also present a copy of the document presented under this subparagraph. This copy shall be a good quality reproduction on which all printing is legible.

10. Section 47.32 is added to read as follows:

§ 47.32 Authority to operate an aircraft.

(a) An aircraft may be operated only if a Certificate of Aircraft Registration issued by the Aircraft Registry or a temporary certificate sent by wire, as provided in paragraph (d) of this section, is on board the aircraft, unless a temporary authority form to operate without registration is issued by the FAA, as specified in paragraph (b) of this section, and is on board the aircraft. Temporary authority to operate an aircraft is not a certificate of registration and does not indicate FAA approval for registration.

(b) An applicant for a Certificate of Aircraft Registration may request temporary authority to operate the aircraft prior to receiving the Certificate of Aircraft Registration from the FAA Aircraft Registry in the following ways:

(1) The applicant may mail or deliver the application and other documents required by § 47.31 to the Aircraft Registry accompanied by a stamped, self-addressed envelope or a prepaid overnight envelope. The applicant must check the block on the application

requesting temporary authority to operate the aircraft. If the Aircraft Registry determines that temporary authority to operate without registration is appropriate, it will return in the envelope provided a temporary authority form allowing operation of the aircraft within the United States.

(2) The applicant may, in person, present to any FAA Flight Standards District Office (FSDO), General Aviation District Office (GADO), Air Carrier District Office (ACDO), International Field Office (IFO), or Civil Aviation Security Field Office (CASFO), the application and other documents required by § 47.31 and a stamped envelope showing the address of the Aircraft Registry as it appears in § 47.19 or the applicant may, in person, present the required documents to the Aircraft Registry. If the FAA office determines that temporary authority to operate without registration is appropriate, it will issue a temporary authority form granting temporary authority to operate the aircraft within the United States.

(3) Paragraph (b) of this section does not apply to aircraft not previously registered or to aircraft last registered in a foreign country, for which temporary authority will not be provided.

(c) A temporary authority form issued by an official of the Aircraft Registry or an FAA office, when carried on board the aircraft, authorizes the operation of the aircraft in the United States until 45 calendar days after the date stamped on the temporary authority form or until the applicant receives the Certificate of Aircraft Registration from the Aircraft Registry, or until the date the FAA Aircraft Registry denies the application, whichever comes first. If the FAA has neither issued the Certificate of Aircraft Registration nor denied the application, the FAA Aircraft Registry issues a Letter of Extension that serves as authority to continue to operate the aircraft without registration within the United States while it is carried in the aircraft with the temporary authority form.

(d) Neither a temporary authority form nor a temporary authority form with a Letter of Extension provides authority to operate the aircraft outside the United States. An applicant who wishes to operate the aircraft outside the United States before the registration certificate has been received may request that the Aircraft Registry review the application on a priority basis and issue a temporary certificate of registration to the applicant for use outside the United States.

11. Section 47.39 is revised to read as follows:

§ 47.39 Effective date of registration.

An aircraft is registered on the date that the Aircraft Registry determines that the requirements of this part have been met. The effective date of registration is shown as the date of issuance on the Certificate of Aircraft Registration.

12. Section 47.41 is amended by revising the introductory language of paragraph (a); deleting the semi-colon after paragraphs (a)(1) through (a)(6) and the phrase "or" after paragraph (a)(7) and inserting a period at the end of paragraphs (a)(1) through (a)(7); redesignating paragraphs (a)(1) through (a)(9) as paragraphs (a)(2) through (a)(10); adding new paragraphs (a)(1) and (a)(11); and revising paragraph (b) to read as follows:

§ 47.41 Duration and return of Certificate.

(a) Each Certificate of Aircraft Registration issued by the FAA under this subpart is effective, unless suspended or revoked, until the date upon which one of the following events occurs:

(1) The certificate expires.

* * *

(11) The date set forth in § 47.46(b) passes and the certificate holder does not apply for reregistration.

(b) The Certificate of Aircraft Registration, with the reverse side completed, must be returned to the Aircraft Registry as follows:

(1) Within 60 days after the death of the holder of the certificate, by the administrator or executor of his estate, or by his heir-at-law if no administrator or executor has been or is to be appointed.

(2) Within 10 days upon the termination of the registration, by the holder of the Certificate of Aircraft Registration in all other cases mentioned in paragraph (a) of this section.

(3) If the certificate is not available, an affidavit describing the aircraft, stating the reason the certificate is not available, must be submitted to the Aircraft Registry within the time specified by paragraphs (b)(1) or (b)(2) of this section.

13. Section 47.45 is revised to read as follows:

§ 47.45 Change of address.

Within 30 days after any change in the mailing address or permanent residence of a registrant, the registrant shall submit an Aircraft Registration Application indicating the change of address and comply with § 47.31(b). Upon acceptance the Aircraft Registry will issue a revised Certificate of Aircraft Registration without charge.

14. Section 47.46 is added to read as follows:

§ 47.46 Reregistration and renewal registration.

(a) A Certificate of Aircraft Registration issued on or after [Effective date of final rule] will expire at the end of the 36th month after the month in which it is issued.

(b) Each aircraft registered under this part before [Effective date of final rule] must be reregistered in accordance with this paragraph. Each applicant for reregistration must comply with § 47.31, except for paragraph (a)(2) of § 47.31. Regardless of the year the aircraft was registered, each holder of a registration certificate issued in a given month shall apply between [the effective date] and [36 months after the effective date], depending on the month the certificate was issued.

(c) Each holder of a Certificate of Aircraft Registration containing an expiration date must apply for renewal at least 45 days before the expiration date of the aircraft registration by complying with § 47.31, except for paragraph (a)(2) of § 47.31.

15. Section 47.49 is revised to read as follows:

§ 47.49 Replacement of Certificate.

(a) A replacement Certificate of Aircraft Registration will be issued when the Registry receives a written request, the documents required by § 47.31(b), the fee specified by § 47.17, and the certificate holder's certification that the original certificate is lost, stolen, or mutilated. The replacement certificate will be sent to the certificate holder's mailing address, or to another mailing address if so requested in writing by the certificate holder or agent.

(b) The certificate holder may request a temporary certificate of registration pending receipt of a replacement certificate. The Registry issues temporary certificates of registration in the form of a collect wire that must be carried in the aircraft until receipt of the replacement certificate.

(c) The Aircraft Registration Application may be used to request a replacement certificate.

§ 47.51 [Removed]

16. Section 47.51 is removed.

17. Section 47.63 is revised to read as follows:

§ 47.63 Application for Dealer's Aircraft Registration Certificates.

A manufacturer or dealer that wishes to obtain a Dealer's Aircraft Registration Certificate, AC Form 8050-6, must:

(a) Submit an Application for Dealers' Aircraft Registration Certificates, AC Form 8050-5; and

(b) Comply with § 47.31(a)(3), (a)(4), and (b).

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

18. The authority citation for Part 61 is revised to read as follows:

Authority: 9 U.S.C. App. 1354(a), 1355, 1401, 1421, 1422, and 1427; 49 U.S.C. App. 106(g) (Revised, Pub. L. 97-449; Jan. 12, 1983); Sec. 7201, et seq., P.L. 100-690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988).

19. Section 61.3(a) is amended by adding a new sentence at the end to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* * * * If a pilot has been issued a 2-part certificate under § 61.18 consisting of an airman identity card and a rating card, both parts of the certificate must be in his personal possession.

* * *

§ 61.5 [Amended]

20. The introductory language of § 61.5(b) is amended by deleting the words "pilot certificates" and inserting in their place the words "the rating card portion of each pilot certificate."

§ 61.11 [Amended]

21. The last sentence of § 61.11(c), which reads, "A certificate without an expiration date is issued to the holder of the expired certificate only if he meets the requirements of § 61.75 for the issue of a pilot certificate based on a foreign pilot license," is deleted.

§ 61.17 [Amended]

22. Section 61.17(a) is amended by changing "120" to "60".

23. Section 61.18 is added to read as follows:

§ 61.18 Expiration and reissuance of all pilot certificates (except student pilot certificates).

(a) After [Insert date 1 year after the effective date] no person who holds a pilot certificate that does not have a specific expiration date may exercise the privileges of that certificate to fly into or out of the United States.

(b) After [Insert date 2 years after the effective date] no person who holds a pilot certificate that does not have a specific expiration date and that was issued in an odd-numbered year may exercise the privileges of that certificate.

(c) After [Insert date 3 years after the effective date], no person who holds a pilot certificate that does not have a specific expiration date and that was issued in an even-numbered year may exercise the privileges of that certificate.

(d) Each person who holds a pilot certificate that does not have an expiration date and that was issued before [insert effective date] may exchange that certificate for a renewable pilot certificate, at any time after [insert effective date], without a further showing of competency, by submitting an application for reissuance on a form and in a manner prescribed by the Administrator.

24. Section 61.19 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 61.19 Duration of pilot and flight instructor certificates.

* * *

(c) *Other pilot certificates.* The airman identity card portion of a pilot certificate (other than a student pilot certificate) issued under this part after [effective date] expires at the end of the 36th month after the month in which it is issued. * * *

* * *

25. Section 61.20 is added to read as follows:

§ 61.20 Renewal of pilot certificate.

Each pilot is responsible for renewing the airman identity portion of his pilot certificate before the expiration date on a form and in a manner prescribed by the Administrator.

§ 61.29 [Amended]

26. Section 61.29 is amended by adding the words "signature, mother's first name," before the words "date and place" in paragraph (a)(1); and by deleting the words "\$2" in paragraph (a)(2) and adding in their place the words "the required fee".

27. Section 61.30 is added to read as follows:

§ 61.30 Fees.

(a) The fees for applications under this part are as follows:

(1) Pilot certificate including airman identity card and ratings card—\$12.00

(2) Renewal or reissuance of pilot certificate—\$12.00

(3) Replacement Certificate if lost, stolen, or mutilated—\$2.00

(4) Replacement Certificate if change of address—No Cost

(b) Each application must be accompanied by the proper fee, that may be paid by check or money order to the Federal Aviation Administration.

§ 61.60 [Amended]

28. Section 61.60 is amended by adding a sentence at the end of the section that reads: "Notification in writing must include the name, signature, date of birth, mother's first name, social security number (if any) of the person to whom the certificate is issued, the certificate number, the previous permanent mailing address, and the new permanent mailing address."

29. Section 61.75 is amended by removing "and" from the end of paragraph (b)(2) and replacing the period at the end of paragraph (b)(3) with the word "; and"; and by adding paragraphs (b)(4) and (j) to read as follows:

§ 61.75 Pilot certificate issued on basis of a foreign pilot license.

* * *

(b) * * *

(4) He complies with application procedures prescribed by the Administrator.

* * *

(j) The airman identity card portion of any pilot certificate issued under this section expires at the end of the 36th month after the month in which it is issued. A pilot is responsible for renewing the airman identity card portion of his pilot certificate before the expiration date on the certificate.

§ 61.77 [Amended]

30. Section 61.77(e)(4) is amended by changing "24 months" to "36 months".

PART 91—GENERAL OPERATING AND FLIGHT RULES

31. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. App. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 91.203 [Amended]

32. Section 91.203(a)(2) which will become effective on August 18, 1990 (See 54 FR 34284, Aug. 18, 1989) is amended by deleting the words "the second duplicate copy (pink) of the Aircraft Registration Application as provided for in § 47.31(b)" and inserting in place thereof "temporary authority to operate an aircraft as provided in § 47.32(b) of this chapter."

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

33. The authority citation for part 183 is revised to read as follows:

Authority: Secs. 301(c), 305, 307(b), 313(a), and 314, 72 Stat. 744; 49 U.S.C. App. 134(c), 1346, 1348(b), 1354(a), 1355, and 1401; sec. 501, 65 Stat. 290; 31 U.S.C. 483a; Sec. 7201, et seq., P.L. 100-690, 102 Stat. 4424 (Federal Aviation Administration Drug Enforcement Assistance Act of 1988).

34. Section 183.21 is amended by adding a paragraph (f) to read as follows:

§ 183.21 Aviation Medical Examiners.

* * *

(f) Accept applications for and verify identity of applicants for reissuance of pilot certificates under § 61.18 of this chapter.

Issued in Washington, DC., on February 8, 1990.

Monte Belger,

Associate Administrator for Aviation Standards.

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